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RECORD, CASE No. 13,516.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1891.

TERM No., 342.

AQUILA H. PICKERING, PLAINTIFF IN ERROR,

vs.

JOHN A. LOMAX AND WILLIAM KOLZE.

IN ERROR TO THE SUPREME COURT OF THE STATE OF ILLINOIS.

FILED MARCH 20, 1889.

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1 State of Illinois Supreme Court, Northern Grand Division.

At a supreme court begun and held at Ottawa on Tuesday, the second day of March, in the year of our Lord one thousand eight hundred and eighty-six, within and for the northern grand division of the State of Illinois.

Present: John H. Mulkey, chief justice; John M. Scott justice; Benj. R. Sheldon, justice; John Scholfield, justice; Simeon P. Shope, justice; Benj. D. Magruder, justice; George Hunt, attorney general; William R. Milligan, sheriff; Alfred H. Taylor, clerk.

Be it remembered that afterwards, to wit, on the third day of March, A. D. 1886, there was filed in the office of the clerk of said court a certain transcript of the record and proceedings of the superior court of Cook county, Illinois, wherein Aquila H. Pickering was plaintiff in error and John A. Lomax and William Kolze defendants in error; which said transcript of the record and proceedings aforesaid is in the words and figures following, viz:

2 UNITED STATES OF AMERICA.

STATE OF ILLINOIS, } ss:
County of Cook, }

Pleas before the Honorable Joseph E. Gary, one of the judges of the superior court of Cook county, in the State of Illinois, holding a branch court of said court, at a regular term of said superior court of Cook county, begun and holden at the court-house, in the city of Chicago, in said county and State, on the first Monday, being the sixth day, of July, in the year of our Lord one thousand eight hundred and eighty-five, and of the Independence of the United States of America the one hundred and tenth.

Present: The Honorable Joseph E. Gary, judge of the superior court of Cook county; Julius S. Grinnell, State's attorney; Seth F. Hanchett, sheriff of Cook county.

Attest: PATRICK McGRATH, *Clerk.*

Be it remembered that heretofore, to wit, on the 5th day of August, in the year of our Lord one thousand eight hundred and eighty-three, Aquila H. Pickering, plaintiff, by Bisbee, Ahrens and Decker, his attorneys, filed in the office of the clerk of the superior court of Cook county his certain declaration, which is in words and figures as follows, to wit:

STATE OF ILLINOIS, } ss:
Cook County, }

In the Superior Court of Cook County, to the June Term, A. D. 1883.

3 Aquila H. Pickering, plaintiff in this suit, by Bisbee, Ahrens & Decker, his attorneys, comes and complains of John

A. Lomax and William Kolze, defendants, who have been summoned according to the form of the statute in such case made and provided, in a plea of ejectment—

For that whereas the said plaintiff heretofore, to wit, on the second day of May, in the year of our Lord one thousand eight hundred and eighty-three, was possessed of certain real estate, lands, and premises, with the appu-tenances, situate in the said Cook county, and known and described as follows, to wit: That part of Robinson's reservation in township (40) forty north, range (12) twelve east, of the third principal meridian, bounded as follows: Commencing at a point nineteen and fifty-nine one-hundredths (19.59) chains west of the southeast corner of the north section of said Robinson's reservation and two and sixty-seven one-hundredths chains south of the south line of said section, running thence west ten and seventy-two one-hundredths (10.72) chains, thence north eighteen and sixty-seven one-hundredths (18.67) chains, thence east ten and seventy-two one-hundredths (10 72) chains, thence south eighteen and sixty-seven one-hundredths (18.67) chains to the place of beginning; also commencing at a point in the south line of said north section eight and twenty-three one-hundredths (8.23) chains west of the southeast corner thereof, running thence north fourteen and ninety-five one-hundredths (14.95) chains, thence west eleven and thirty-six one-hundredths (11.36) chains, thence south seventeen and sixty-one one-hundredths (17.61) chains, thence east eleven and thirty-six one-hundredths (11.36) chains, thence north two and sixty-seven one-hundredths (2.67) chains to the place of beginning.

Which said premises the said plaintiff claims in fee; and
4 the said plaintiff being so possessed thereof the said defendants afterwards, to wit, on the third day of May, in the year of our Lord one thousand eight hundred and eighty-three, entered into the said premises and ejected the said plaintiff therefrom, and unlawfully withhold from the said plaintiff the possession thereof, to the damage of said plaintiff of one thousand dollars; and therefore he brings suit, etc.

BISBEE, AHRENS & DECKER,
Attorneys for Plaintiff.

And on the day and year last aforesaid, to wit, May 5, A. D. 1883, there issued out of the office of the clerk of said court the people's writ of summons; which writ, with the return of the sheriff thereon endorsed, is in words and figures as follows, to wit:

STATE OF ILLINOIS, } *ss:*
Cook County, }

The People of the State of Illinois to the sheriff of said county, Greeting:

We command you that you summon John A. Lomax and William Kolze, if they shall be found in your county, personally to be and to appear before the superior court of Cook county on the first day of the term thereof to be holden at the court-house, in the city

of Chicago, in said Cook county, on the first Monday of June next, to answer unto Aquila H. Pickering in a plea of ejectment to the damage of said plaintiff, as it is said, in the sum of one thousand dollars.

And have you then and there this writ, with an endorsement thereon in what manner you shall have executed the same.

Witness John J. Healy, clerk of our said court, and the [SEAL.] seal thereof, at Chicago aforesaid, this 5th day of May, A. D. 1883.

JNO. J. HEALY, *Clerk.*

5 Endorsed.

P'd 1.35; M., 1.80.

Served this writ on the within-named John A. Lomax by reading the same to him the 25th day of May, 1883.

SETH F. HANCHETT, *Sheriff,*
By F. LEIBRANDT, *Deputy.*

Served this writ on the within-named William Kolze by reading the same to him this 25th day of May, 1883.

SETH F. HANCHETT, *Sheriff,*
By HENRY WULFF, *Deputy.*

And afterwards, to wit, on the 6th day of June, A. D. 1883, John A. Lomax and William Kolze, defendants, by P. T. McElherne, their attorney, filed in the office of the clerk of said court their certain plea, which is in words and figures as follows, to wit:

STATE OF ILLINOIS, } ss:
Cook County, }

In the Superior Court, June Term, 1883.

AQUILA H. PICKERING
vs.
JOHN A. LOMAX, WILLIAM KOLZE. } Ejectment.

And the defendants, by P. T. McElherne, their attorney, come and defend the wrong and injury, when, etc., and say that they are not guilty of unlawfully withholding the tenements in the said declaration mentioned or any part thereof in manner and form as the plaintiff has above thereof complained against them; & of this they put themselves upon the country.

6 By P. J. McELHERNE,
Att'y for Def'ts.

And the plaintiff doth the like.

By BISBEE, AHRENS & DECKER,
His Attorneys.

And afterwards, to wit, on the 21st day of July, A. D. 1885, the same being one of the days of the July term of said court, the fol-

lowing, among other, proceedings were had in said court and entered of record, to wit:

AQUILA H. PICKERING
vs.
JOHN A. LOMAX and WILLIAM KOLZE. } 86825. Ejectment.

On the agreement of the parties to this suit, now here made in open court, this cause is submitted to the court for trial without a jury; and the court, now hereafter hearing all the evidence adduced, the arguments of counsel, and being fully advised in the premises, finds the defendants not guilty; whereupon the plaintiff submits herein his motion for a new trial in said cause. After arguments of counsel and due deliberation by the court, said motion is overruled and a new trial denied.

Therefore it is considered by the court that the defendants do have and recover of and from the plaintiff their costs and charges in this behalf expended and have execution therefor.

Whereupon the plaintiff, having entered his exceptions herein, prays an appeal from the judgment of this court to the supreme court of this State, which is allowed him on filing herein his appeal bond in the penalty of two hundred and fifty dollars, with
7 surety thereon to be approved by the court, together with his bill of exceptions, on or before the twenty-first day of September next.

And afterwards, to wit, on the 21st day of September, A. D. 1885, there was filed in the office of the clerk of said court a certain bill of exceptions, which is in words and figures as follows, to wit:

In the Superior Court of Cook County, July Term, A. D. 1885.

A. H. PICKERING
vs.
JOHN A. LOMAX *et al.* } Ejectment.

Be it remembered that on the trial of the above-entitled cause before the Honorable Joseph E. Gary (a jury being waived), one of the judges of the superior court of Cook county, on the 20th day of July, A. D. 1885, the plaintiff offered on his behalf the following evidence—that is to say:

A. H. PICKERING, the plaintiff, called on his own behalf, having been first duly affirmed, testified as follows:

Direct examination.

By Mr. DECKER:

Q. How long have you resided in Chicago?
8 A. Twenty years, about.
Q. Are you the plaintiff in this suit?
A. I am.
Q. Have you the title deeds to this property in question?

A. I have not.

Q. Where are they?

A. They are lost and burned.

Q. Did you ever have the title deeds covering any particular portion of the chain of title?

A. I have.

Q. Back to what point?

A. I have had the deed from Joseph Robinson to Horton and from Horton to the administrator, Leon Strauss, and Leon Strauss, administrator *de bonis non*, to Moses W. Baers; from Moses W. Baers to Charles Kappenmeir, and Charles Kappenmeir and wife to Gotthelf, and this Gotthelf—I forget his given name—to Joseph Gotthelf, and Joseph Gotthelf to Henry H. Dyer and wife, and Henry H. Dyer and wife to A. H. Pickering.

Q. What has become of all those deeds?

A. A portion of them were lost in my moving from South Water street to the Union Bank building, and the balance of them were burned at the time of the big fire.

Q. From whom did you obtain those title deeds?

A. From Henry H. Dyer and wife, Sarah Jane.

Q. Do you remember what particular deeds were lost at the *the* time of the fire?

A. The deeds I had from Joseph Robinson, and also the Dyer deeds; just what others there are I don't know. I lost a package of deeds; there were a lot lost prior to the fire.

9 Q. Did you ever make any search for them?

A. I have.

Q. What did you do?

A. I searched every part of my premises often before the fire and still after the fire.

Q. And been unable to find them?

A. And been unable to find them.

Q. Did you get any information as to where they were?

A. Nothing. I will say that there was a part of the papers that was lost in moving that was found in the alley back of the Sherman house, but these deeds were not.

Q. And you never have been able to find them?

A. I never have been able to find them.

Q. You say you had some of them that were not lost at that time, prior to the fire?

A. I had lost some prior to the fire and some were burned at the fire.

Q. Those you did not lose prior to the fire were burned during the fire?

A. That is it.

Q. Were you here at the great fire in Chicago?

A. Yes, sir.

Q. You know the fact to be that the records of the courts were burned?

It is admitted that the conflagration burned up all public records relating to lands in question.

Q. Who was your immediate grantor?

A. Henry H. Dyer and his wife, Sarah Jane.

Q. After obtaining your conveyance from him what did you do in reference to taking possession?

10 A. Perhaps the next year, or soon after that, I went out to examine it, and I couldn't find it, and I got the county surveyor, Mr. Wolcott, to go and survey it. He did survey it and put stakes at each corner, and marked the trees—surveyed it and gave me the map of it.

Q. What did you do with the map?

A. I have got it yet.

Q. Did you ever go onto the land after obtaining this map?

A. I have.

Q. What did you do?

A. I had a man with me, and we went around and examined the corners and seen the posts—the stone. I had a stone set at the different corners; went over it, and from there I went to Mr. Cooney's, who lived close by, and agreed with Mrs. Cooney that they would take charge of it for me and see that the timber was not disturbed or molested, for which I was to allow them the privilege of using the down timber, as they wished, for fire-wood, for which they agreed to take charge of it for me—take the full control.

Q. Did you have the map with you when you traced the lines?

A. I did.

Q. Is this the map (handing paper)?

A. Yes; this is the same map.

Q. What lines enclose the land in controversy?

The COURT: That will appear by your description in your declaration.

Map offered in evidence on behalf of plaintiff.

Objected to by counsel for defendant.

Objection overruled; to the overruling of which counsel for defendant, then and there excepted.

Map marked Exhibit "A" is as follows:

(Here follows diagram marked page 11.)

12 Q. Well, what was the date of the deed from Dyer to you?

A. It was late in the fall of 1866—November, I think—the early part of November, 1866.

Q. Can you give the precise date?

A. It is dated to 10th day of November, 1866.

Q. Did his wife join with him?

A. She did.

Q. What kind of a deed was it?

A. It was a general warranty deed in a printed form, the same language exactly as the other deeds that I have mentioned, all prepared by Culver, Page & Hoyne; a form that he had got up.

Q. The same form as the other deeds that you have mentioned after Robinson's?

A. Yes; exactly the same description.

Q. Did you see them sign the deed?

A. I seen Dyer and his wife sign the deed.

Q. Was it acknowledged?

A. It was.

Q. Before whom was it acknowledged?

A. Well; I cannot tell the gentleman's name. It was a notary public.

Q. Was you present when it was acknowledged?

A. I was.

Q. To whom was it delivered?

A. Delivered to me.

Q. What was the description of the premises contained in it?

A. It was the same description as is marked on this map—metes and bounds—so many chains each way; the two different pieces.

Q. Did you hear me read the description from the declaration?

A. Yes; just the same. I have looked it over a number of times.

13 Q. What did you do with that deed?

A. The deed from Dyer to me?

Q. Yes.

A. It was lost at the time the other deeds were lost.

Q. You say those deeds were lost before the fire?

A. Yes; with other deeds.

Q. I mean the prior deed.

A. Yes, sir.

Q. Do you know whether the prior deed was recorded?

A. It was.

Q. Can you state when?

A. I think it was the 23rd of November; soon after it was made.

Q. Where was it recorded?

A. Recorded in Cook county here, in the court-house, in the recorder's office in Cook county.

Q. You say you went in there and took possession soon after you got this Dyer deed?

A. Yes; I went onto the land and took possession—or, well, I suppose——

Q. How long did you remain in possession there?

A. I supposed I was in possession of it up until I found there was other parties had fenced it in with other lands.

Q. About when was that?

A. Well, I don't know; it is some time ago; it must have been four or five years ago.

Witness withdrawn for the present.

FERNANDO JONES, a witness called on behalf of plaintiff, having been first duly sworn, testified as follows:

14 Direct examination.

By Mr. DECKER:

Q. Mr. Jones, where do you reside?
A. I reside in Chicago at present.
Q. What is your business?
A. Examiner of titles of real estate in Cook county.
Q. What is the firm name?
A. I am not connected with a firm now.
Q. What was your business in 1870?
A. The same business; the firm was Jones & Sellers.
Q. Will you please state what their general business was?
A. It was preparing abstracts of title for property in Cook county.
Q. What was the mode in which they did their business?
A. We prepared indexes of the property—tract indexes—giving the chain of title on a separate page of a book, and from that going to the record and making up an examination from the record. This is by the aid of those indexes.
Q. What did you do for your customers?
A. We prepared an abstract of the title of record in the recorder's office, and the plats, and any minutes from the general land office, and judgments, and tax sales.
Q. You did that for a consideration, I suppose?
A. We did that for a consideration.
Q. And your general business was that of abstract-making?
A. That was the business.
Q. Did you have any other business than that, as a firm?
A. No; not as a firm.
Q. I hand the witness an abstract dated June 27th, 1870, the last certificate. Who prepared that abstract?
15 A. It was prepared in my office—that is, in the office of Jones & Sellers.
Q. Do you know whether you personally examined it at the time it was made?
A. It is prepared by Mr. Bushwah—that is, the minutes were made—who was at that time an employee in the office.
Q. Was it examined by you?
A. It was examined by me after this abstract was made and the copy taken off; that is a letter-press impression from it I examined for the purpose of making an abstract in another case. I examined the letter-press copy taken from this by the original papers in the case and the plat and the deeds in the recorder's office and checked them on the letter-press copy, which I considered the same as having examined this; it was an impression from this.
Q. What do you say as to its having been made in the regular course of business of the office?
A. It was made in the regular course of business.
Q. For whom?

A. For Mrs. Robinson.
Q. One of the Robinson heirs?
A. One of the Robinsons.
Q. Do you know whether she had an interest in the property?
The COURT: What connection had she with old Chief Robinson?
A. She was one of the Robinsons.
The COURT: What Mr. Jones knows of her interest in the matter he may tell.
A. She was interested in a part of the property that was originally the two sections granted by the United States to Alexander Robinson, interpreter.

16 (By the COURT:)

Q. What relation was she to Alexander, this Mrs. Robinson you speak of?
A. She was the wife of one of the young men, who was the son of Alexander.

(By the COURT:)

Q. She was the daughter-in-law of old Alexander?
A. The abstract covered the examination. The early part of it would cover the title to both sections to a certain extent and give the history of it.
The COURT: Well, put it in evidence and let it show for itself—what it is.
Mr. DECKER: We offer that part of the abstract in evidence which shows simply the decree in partition and as far as it goes in our chain of title, which is as follows:

Abstract of title to sublot 22 of lot 1 and sublot 8 of lot 2, in assessors' subdivision of south section of Robinson's reservation.

* * * * * * *

Decree.

Cook County Court of Common Pleas.

JOSEPH ROBINSON
vs.
ALEXANDER ROBINSON, DAVID ROBINSON, CYNTHA ROBINSON, & MARY ROBINSON. } Case No. 1078.

Petition filed Feb'y 22, 1847, alleged that complainant and said defendants, David, Cynthia, & Mary Robinson, being minors and children of said Alexander Robinson, are seized in fee simple in possession as tenants in common in equal undivided fifths of
17 and in premises beginning on the N. boundary of a survey of 640 acres of land granted to Claud La Frombois by the treaty between the United States of America and the united nations of Chippewa, Ottawa, and Pottawattomie Indians 16.05 chains W. of N. E. corner thereof, thence W. with S. boundary of this survey

& N. boundary of Claud La Frombois' survey 80 chains to the S. W. corner of the survey, thence N. 80 chains to corner of this survey thence W. 19 chains to a flag pond, 28.50 chains to a prairie stone in the pond for a corner of this survey, thence 80.18 chains to the N. W. corner of said survey, thence E. with N. boundary of survey 20.66 chains to the westwardly bank of Des Plaines river, 259 links wide, running from N. W. to S. E., 47.55 chains to the bank of a slough coming from the N. W., 80.15 chains to the N. E. corner of this survey; thence S. 80 chains to the beginning, in town. 40 N., R. 12 E., 3 P. M., 1,280 acres; that said land was granted to said Alexander Robinson and his children by a treaty concluded by and with the Government of the United States and the united nations of Ottawa, Pottawattomie, & Chippewa Indians, at Prairie du Chien, on July 29, 1829; that complainant is one of the children of said Alexander Robinson; that said David, Cynthia, & Mary are also children of said Alexander Robinson and minors; prays for partition of premises above described.

Summons issued, dated Feb'y 22, 1847, to Alexander, David, Cynthia, & Mary Robinson; returnable on the 1st Monday of May next; returned, "Executed this 21st day of April, 1847, by reading the within in presence of the within-named Alexander Robinson, David Robinson, Cynthia Robinson, and Mary Robinson, and leaving the same with a true copy of the within."

Order May 17, 1842, vol. "C," page 54, appoints Buckner S. Morris guardian *ad litem* for the infant heirs, David, Cynthia, and Mary Robinson; answer of said David, Cynthia, & Mary Robin-
18 son, by B. S. Morris, guardian, &c., filed May 19, '47, requires proof, and submitting their interests to the protection of the court.

Order May 18, 1847, vol. "C," page 58, that bill be taken as confessed against Alexander Robinson by default and cause referred to Mark Skinner, master in chancery, to take proof.

Master's report filed Oct. 26, 1847—

Reports that he has examined patent, duly executed by the President of the U. States, John Tyler, by Robert Tyler, secretary, and that in and by the terms of said patent there was granted to said Alexander Robinson and his children the property mentioned in petition; that the estate so granted is indefeasible in the grantees, but cannot be conveyed by them except by permission and approval of the President of the U. S.

Decree Oct. 27, 1847.—It appearing to the court that said Joseph, Alexander, David, Mary, & Cynthia Robinson are seized in fee simple and are possessed as tenants in common in equal undivided $\frac{1}{5}$ parts in and to (premises heretofore set forth), order- and decrees that said Joseph Robinson have judgment of partition, and orders that Thomas C. Moore, Carlton Holland, and William H. Davis be appointed commissioners to make said partition.

Commissioners' report not in papers.

Decree (sets forth commissioners' report in full) and confirms the same; orders and decrees that partition of the said land be made as set forth in said report, viz., that there be, and is hereby, set apart

to Alexander Robinson 256 acres from the south side of the south section of said lands, being 32 chains wide from N. to S. and extending across said sect. from E. to W. 80 chains wide; to David Robinson 192 acres from the south side of the north ½ of said south section, being a strip of land 24 chains wide from N. to S. and extending across said sect. from E. to W. 80 chains; also a strip from
19 the north part of the S. ½ of said sec., being 8 chains wide from N. to S. and extending across said sec. 80 chains, containing 64 acres, and to the said other parties other property.

Orders and decrees that said parties execute partition deeds each to the others for their respective interests on or before the 1st of Sept. next, and that Buckner S. Morris, as commissioner appointed for that purpose, execute a partition deed or deeds for the minors herein in conformity with the provisions of this decree, and should the said parties in interest and the said B. S. Morris not execute said deed before Sep. 1, '48, then Alfred Cowley is appointed commissioner to execute said deed.

Joseph Robinson and Ellen Maria, His Wife,
to
Alexander Robinson, David Robinson, Cynthia Robinson, and Mary Robinson.

Instrument, deed of partition.
Date of inst., Aug. 23, 1848.
Consideration, $1.
Date of filing, July 12, '55.
Vol. and page, 92, 558.

Recites that by virtue of decree of the Cook county court, made at the May term of said court, on 29th May, 1848, it was ordered, adjudged, and decreed that partition be made of two sections of land situate and being in Cook Co., Ills., and granted to Alexander Robinson and his children, viz., Joseph Robinson, David Robinson, Mary Robinson, and Cynthia Robinson, by the fourth article of the treaty between the United States of America and the united nations of Chippewa, Ottawa, and Pottawattomie Indians of the waters of Illinois, Milwaukee, and Manitowoc rivers, made and con-
20 cluded at Prairie du Chien, in the then Territory of Michigan, now State of Wisconsin, on 29th July, 1829; and by said decree it was further ordered, adjudged, and decreed that the said parties make and execute partition deeds each to the other for their respective interests in the said lands on or before Sept. 1st next, meaning 1st Sept., 1848, and that Buckner S. Morris, Esq., a commissioner appointed for that —, make and execute a partition deed or deeds for the minors herein in conformity with the provisions of this decree. Therefore, in consideration of the premises and $1, conveys to 2d parties all right, title, and interest 1st parties have in and to following-described land in Cook Co., Ills., and being parts of said two sections of land described as follows, viz: To Alexander Robinson, 256 acres from the south side of the south section of said lands, being 32 chains wide from N. to S. and ex-

tending across said sec. from E. to W. 80 chains wide; to David Robinson, 192 acres from the south side of the N. ½ of said south sec., being a strip of land 24 chains wide from N. to S. and extending across said sec. from E. to W. 80 chains; also a strip from the north part of the S. ½ of said sec., being 8 chains wide from N. to S. and extending across said sec. 80 chains, containing 64 acres, and to said other parties other property.

Warrants against persons claiming under grantor.

(Here follows diagram marked p. 21.)

22 * * * * * * *

We have examined and find no conveyances of the premises described in the caption hereto by any of the parties named herein as grantor or grantors shown on our private indices to have been recorded in the recorder's office of Cook Co., Ills., prior to the dates of record of the instruments by them respectively, as set forth on the ten (10) preceding sheets; no judgments in any of the courts having their records in Cook Co., Ills., as appear by our private dockets, against Alexander, Amelia, Catherine, or Sophia E. Robinson, which are liens on said land, and no tax sales of same shown on our tax records remaining unredeemed or uncanceled of record.

Chicago, April 17, 1869, 5 o'clock p. m.

JONES & SELLERS.

Objected to by counsel for defendant-. Objection overruled; to the overruling of which objection counsel for defendants then and there excepted.

(By the COURT:)

Q. Do you know which one of these Robinsons she was the wife of?

A. The one that that was made for?

(By the COURT:)

Q. Yes.

A. I am not certain that I can remember—I haven't had it in my mind for so long—whether it was Alexander or Bill.

(By Mr. MCELHERNE:)

Q. It was not Joseph?

A. It was not Joseph, because that was for the same property in the south section.

Q. Are you familiar with the Robinson reservation—with the land itself?

23 A. I used to be.

Q. Did you ever see a decree of the county court decreeing a partition of these premises among Alexander Robinson and his children?

A. Yes, sir.

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32 ch.	8 ch.	24 ch.	16 ch.
80 ch. Mary Robinson, 256 Acres.		Cynthia Robinson, 216 Acres.	Joseph Robinson, 128 Acres. 80 ch.
			16 ch.

228.80 ch.

16 ch.	24 ch.	8 ch.	32 ch.
Joseph Robinson, 128 Acres.	David Robinson, 216 Acres.		Alexander Robinson, 256 Acres. 80 ch.

Q. Did you ever see that report under the decree referred to in the abstract?

A. I have.

Q. Did you ever see the record of the decree?

A. I have seen the record of the decree.

Q. Did you ever examine the record of the partition deed?

A. Yes, sir.

Q. Do you know what part of this land was conveyed and set off in this partition proceeding to Joseph Robinson?

A. A strip from the south side of the north section.

Objected to by counsel for defendant-. Objection overruled; to the overruling of which objection counsel for defendant- then and there excepted.

A. I will answer yes.

Q. What was set off to him?

A. A strip from the south side of the north section sixteen chains wide. My remembrance is that would be 128 acres.

Q. What else?

A. Each of the others had a certain——

The COURT: No; what else to Joseph? What else was set off to Joseph? Anything from the south section?

A. Yes; a piece from the south section.

Q. Do you remember what part of the south section?

A. I don't think I remember the exact description of the
24 south section.

Q. But you do remember the part of the north section that was set off to him? Do you remember whether there was the same amount set off in the south section to him?

Objected to.

(By the COURT:)

Q. How much was set off to him?

A. My remembrance is that there was 32 chains set off to him, as there was to others, north, but I am only giving it from my general remembrance. I have not refreshed my remembrance in that respect, looking at anything in so long.

Q. Will you please look at the map that is on that abstract and see if it refreshes your recollection as to what was set off in the south section?

A. It is as I thought I remembered, sixteen chains in the map.

Q. Sixteen chains from the south section also?

A. Yes, sir.

Q. What part of the south section?

A. The north part of the south section, bringing the two pieces together for Joseph.

Q. So he had set off to him sixteen chains wide from the north side of the south section and sixteen chains wide from the south side of the north section?

A. Yes, sir.

Q. That is straight through—clear through on one side of the section to the other?

A. Yes; through from east to west of the section.

Q. Are you familiar with this land in controversy, the land claimed by Mr. Pickering?

A. I remember the land. I have been out there and been to Robinson's house and Mrs. Cooney's—Cynthia—a few years
25 ago. I remember how it looked. The river is not set forth; the river runs through there.

Q. Do you remember whether there was an assessors' subdivision made of that land?

A. I know there was, both on the north and south section.

Q. What I want to learn specially about now is whether you know how this sixteen chains of the south side of the north section was indicated in the assessors' subdivision.

A. It was lot one.

Q. What was lot one?

A. Sixteen chains wide on the south side of the north section.

Q. Where did you learn that from?

A. From the plat of the assessors' subdivision.

Q. The original plat?

A. The original plat.

Q. From the records here before the fire?

A. From the records here before the fire.

Q. Do you know what part of that was designated as sublot one of lot one in the assessors' subdivision? *Q.* What part of that lot did that take?

A. Well, sublot one, my remembrance was the part lying east of the river, and sublot two of lot one lying west; the larger part being west of the river, say, perhaps fifty acres. I won't trust my memory to that.

Q. How many acres was included in sublot one of lot one?

A. Well, I should think, from my general remembrance, there was about fifty acres of sublot one and eighty acres of sublot two of lot one, divided by the river.

Q. On which end of lot one was sublot one?

A. On the east end there; fifty-odd acres was taken from
26 the east side of lot one.

A. To make sublot one, yes; it was divided that way.

Q. In one continuous tract?

A. Yes; one tract. That part of the land that was set off in the north section to Joseph Robinson divided by the river, the whole of it was called lot one, and sublot one embraced that part of it that lay east of the river and sublot two laid west of the river.

(By the COURT:)

Q. You say the part set off to Joseph in the north section was——

A. Lot one.

(By the same:)

Q. And so much as lay east of the river was sublot one?

A. It did lay east of the river. I do not remember exactly whether the boundary of lot one was the boundary of the river.

Q. You can state about the quantity of land.

A. I should think the proportion was about fifty acres on one side and eighty acres on the other.

Q. That is fifty in sublot one?

A. Yes.

Q. And what I want to know is whether that fifty acres was bounded on the east by the east line of this part set off to Joseph Robinson?

A. It was.

Q. And on the south by what line?

A. The north line of the piece set off to Joseph Robinson.

Q. And on the west?

A. On the west—I am not certain. It was a line on the map that did not show the river. I am not certain whether it was actually on the river or not, but it was——

27 Q. Far enough west to contain about how many acres?

A. I should say about fifty acres. I do not remember the proportions—that is, more than a general remembrance or guess-work. As to the actual number of acres, I cannot remember.

Q. Have you examined this map marked "Exhibit A," made by Mr. Wolcott, of the land in controversy?

A. I saw it laying there, but I have not examined it.

Q. What portion of this land in controversy comes within sublot one which was mentioned?

A. Well, tell me what piece is in controversy.

Q. What I want to know, Mr. Jones, is whether sublot one contains all of this land excepting so much of it as lies south of the south line of the north section.

A. Well, I should think so. I conclude that is so. This would make it sublot one, $5\frac{24}{100}$ acres. Whether the west line of lot one was the actual border of that river I don't know; it was very near.

Q. I will ask you whether the diagram of this Robinson reservation contained in this abstract to which your attention has been called—whether that corresponds with the map which you saw of the land contained in the commissioner's report contained in the partition deed.

A. Yes; that is the plat contained in the partition deed and the same plat in the commissioner's report.

Q. Was there more than one plat in the commissioner's deed?

A. One partition deed.

Q. Did they all unite in that conveyance, the parties named in that partition suit?

A. They were all united by themselves or their representatives; the deed was made by the order of the court and approved;

28 the decree was made on the commissioner's report; the commissioner's report was intended to have been spread of record with the decree, but it was not; the record of the court gave the decree and referred to the commissioner's report, and it was expected to have been spread on the record, but the commissioner's report stood

as part of the decree; then the commissioner's report and the plat connected with that was not to be found amongst the papers several years before the fire.

Q. You say you had seen that report yourself?

A. I have seen that report and took a tracing of it or had a tracing made of it.

Q. And you say that that diagram there correctly represents the way in which the land was partitioned?

A. Yes, sir.

Q. Did you do anything with reference to getting the approval of the President to the Robinson deed to Horton, from Joseph Robinson?

A. I did.

Q. What did you do about that?

A. I procured the approval of the department of Indian affairs and the signature of the President, on the recommendation of the department of Indian affairs, to a certified copy of the deed from Joseph Robinson to Horton. I have forgotten now his first name.

Objected to by counsel for defendant-, as that is a matter of record.

Mr. DECKER: We offer in evidence a transcript of the certified copy of the deed from Joseph Robinson to Horton, with affidavits accompanying the same, being the application to the President for his approval of the same and the proceedings had and ap-
29 proval of the President thereon, marked Exhibit C½, and a certified copy of the record thereof from the recorder's office of said Cook county, marked Exhibit D 1.

Objected to by counsel for defendant- because it shows no conveyance to Joseph Robinson.

Objection overruled; to the overruling of which objection counsel for defendant- then and there excepted.

Certified copy of deed marked Exhibit D 1 is as follows:

This indenture, made this third day of August, in the year of our Lord one thousand eight hundred and fifty-eight, between Joseph Robinson and Maria, his wife, of the town of Leyden, county of Cook and State of Illinois, party of the first part, and John F. Horton, of the city of Chicago and the county and State aforesaid, party of the second part, witnesseth: That the said party of the first part, for and in consideration of the sum of forty-one hundred dollars ($4,100) in hand paid by the said party of the second part (the receipt whereof is hereby acknowledged and the said party of the second part forever released and discharged therefrom), has granted, bargained, sold, remised, released, conveyed, aliened, and confirmed, and by these presents does grant, bargain, sell, remise, release, convey, alien, and confirm, unto the said party of the second part and to his heirs and assigns forever all the following lots, pieces, or parcels of land situate in the county of Cook and State of Illinois and known and described as follows, to wit: Commencing nineteen chains & fifty-nine links west of the southeast corner of the north section of Robinson's reservation and two chains and sixty-seven

links south of the S. line of said sec., thence west ten chains
30 and seventy-two links to a post witness tree, a white elm twenty inches in diameter, bears west twenty-eight links; thence north eighteen chains and 67 links to a post; thence east ten chains and 72 links to a post witness described in second deed; thence south eighteen chains and sixty-seven links to the place of beginning, containing by estimation twenty acres, be the same more or less.

Also the following, to wit: Commencing at the southeast corner of the north section of Robinson's reservation, thence south sixty-six degrees west six chains and fifty-one links to a post; thence west thirteen chains and sixty-five links to a post, a bur O. — diam., bears S. 36 west 36 links; thence north seventeen chains and sixty-one links to a post of white O. six inches in diam., bears N. 83½° W. 15 links, a black O. 18 inches in diam. bears S. 79° E. 64 links; thence east 11 chains & 36 links to a burr oak 24 in. in diam., thence S. 14 chains and 95 links to a post, thence E. 8 chains & 23 links to the place of beginning, containing twenty-one $8\frac{1}{10}$ of an acre—

Together with all and singular the hereditaments and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof, and all the estate, right, title, interest, claim, or demand whatsoever of the said party of the first part, either in law or equity, of, in, and to the above-bargained premises, with the hereditaments and appurtenances:

To have and to hold the said premises above bargained and described, with the appurtenances, unto the said party of the second part, his heirs and assigns forever.

And the said Joseph Robinson & wife, party of the first part, for their heirs, executors, and administrators, do covenant, grant, bargain, and
31 agree to and with the said party of the second part, his heirs and assigns, that at the time of the ensealing and delivery of these presents they are well seized of the premises above conveyed as of a good, sure, perfect, absolute, and indefeasible estate of inheritance in law in fee simple and have good right, full power, and lawful authority to grant, bargain, sell, and convey the same in manner and form aforesaid, and that the same are free and clear from all former and other grants, bargains, sales, liens, taxes, assessments, and incumbrances of what kind or nature soever; and the above-bargained premises in the quiet and peaceable possession of the said party of the second part, his heirs and assigns, against all and every person or persons lawfully claiming or to claim the whole or any part thereof the said party of the first part shall and will warrant and forever defend.

In witness whereof the said party of the first part hereunto set their hands and seals the day and year first above written.

JOSEPH ROBINSON. [SEAL.]
ELLEN MARIA ROBINSON. [SEAL.]

STATE OF ILLINOIS, } ss:
Cook County, }

I, justice of the peace in and for the said Cook county, in the State aforesaid, do hereby certify that Joseph Robinson & Ellen Maria Robinson, who are personally known to me as the same person- whose name- *is* subscribed to the within instrument of writing, appeared before me this day in person and acknowledged that they signed, sealed, and delivered the said instrument of writing as their free and voluntary act for the uses and purposes therein set forth.

And the said Ellen Maria Robinson, wife of the said Joseph Robinson, having by me been examined separate and apart and
32 out of the hearing of her said husband, and the contents and meaning of the said instrument of writing having been by me made known to her, acknowledged that she had freely and voluntarily executed the same and relinquished her dower to the lands and tenements therein mentioned without compulsion of her said husband, and that she does not wish to retract the same.

Given under my hand and seal this 4th day of August, A. D. 1858.

WM. H. GALLUP. [SEAL.]
Justice of the Peace.

[Endorsed:] No. 46310. Filed July 18th, 1861.

STATE OF ILLINOIS, } ss:
County of Cook, }

I, Norman T. Gassett, clerk of the circuit court and *ex officio* recorder in and for said county, in the State aforesaid, do hereby certify that the annexed is a true copy of the record of a certain instrument filed in my office on the 18th day of July, A. D. 1861, and recorded in Book 217 of Deeds, on page 300.

In testimony whereof I have hereunto set my hand and affixed the seal of our said court, at Chicago, this 1st day of Aug., A. D. 1870.

[SEAL.] NORMAN T. GASSETT,
Clerk of the Circuit Court and ex Officio Recorder of Cook County.

[Int'l rev., 5c.]

DEPARTMENT OF THE INTERIOR,
OFFICE INDIAN AFFAIRS, *January 6th*, 1871.

The within certified copy of deed to John F. Horton from Joseph Robinson & Maria, his wife, for a portion of the land reserved
33 for Alexander Robinson and his children by the 4th article of the treaty with the Chippewa, Ottawa, and Pottawattomie Indians, concluded at Prairie du Chien July 29th, 1829, is respectfully submitted to the Secretary of the Interior, with the recommendation that it be presented to the President for his approval.

E. S. PARKER,
Commissioner.

DEPARTMENT OF THE INTERIOR,
WASHINGTON, D. C., *Jan.* 21*st*, 1871.

The within certified copy of deed is respectfully submitted to the President for his approval.

C. DELANO, *Secretary.*

EXECUTIVE MANSION,
WASHINGTON, D. C., *Jan.* 21*st*, 1871.

The within deed is hereby approved.

U. S. GRANT.

DEPARTMENT OF THE INTERIOR,
OFFICE INDIAN AFFAIRS,
WASHINGTON, D. C., *February* 15*th*, 1873.

I, Henry R. Clum, acting Commissioner of Indian Affairs, do hereby certify that the foregoing is a true and literal copy of a certified copy of a deed to John F. Horton from Joseph Robinson and Maria, his wife, for a portion of the land reserved for Alexander Robinson and his children by the 4th article of the treaty with the Pottawattomie and other Indians, concluded July 29th, 1829, approved by the President of the United States Jan'y 21st, 1871,
34 as the same appears of record in this office.

H. R. CLUM,
Act'g Commissioner.

DEPARTMENT OF THE INTERIOR,
WASHINGTON, D. C., *February* 15*th*, 1873.

I, Columbus Delano, Secretary for the Department of the Interior of the United States of America, do hereby certify that Henry R. Clum, whose name appears signed to the foregoing certificate, is now and was at the time of signing the same acting Commissioner of Indian Affairs, and that full faith and credit are due to his official acts as such.

In testimony whereof I have hereunto set my hand and have caused the seal of said department to be affixed on the day and year above written.

[Seal of the Department of the Interior.]

C. DELANO, *Secretary.*

No. 88794. Filed for record Mar. 12, A. D. 1873, and recorded Mar. 15, A. D. 1873.

JAMES STEWART, *Recorder.*

STATE OF ILLINOIS, } ss:
County of Cook, }

I, James W. Brockway, recorder of deeds in and for said county, in the State aforesaid, do hereby certify that the annexed is a true and correct copy of the record of a certain instrument filed in
35 my office the 12th day of March, A. D. 1873, as document No. 88794, and recorded in Book 216 of Records, at page 111.

In testimony whereof I have hereunto set my hand and affixed my official seal, at Chicago, this eighth (8) day of April, A. D. 1878.

[SEAL.] JAS. W. BROCKWAY, *Recorder.*

Transcript from Indian Department, marked "Exhibit C½," is as follows:

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
WASHINGTON, D. C., *February* 4, 1882.

I, Hiram Price, Commissioner of Indian Affairs, do hereby certify that the paper hereto attached is a true and literal copy of a copy of a deed, with accompanying certificates, from Joseph Robinson and Maria (Ellen Maria) Robinson, his wife, to John F. Horton, dated August 3, 1858, and approved by the President January 21, 1871, for a tract of land as therein described, as the same appear of record in this office.

H. -RICE,
Commissioner.

DEPARTMENT OF THE INTERIOR,
WASHINGTON, D. C., *February* 4, 1882.

I, Samuel J. Kirkwood, Secretary for the Department of the Interior of the United States of America, do hereby certify that Hiram Price, whose name appears signed to the foregoing certificate, is now and was at the time of signing the same Commissioner of Indian Affairs, and that full faith and credit are due to his official acts as such, and that the paper hereto attached is a true and literal copy of a copy of a deed, with accompanying certificates, from Joseph Robinson and Maria (Ellen Maria) Robinson, his wife,
36 to John F. Horton, dated August 3, 1858, and approved by the President January 21, 1871, for a tract of land as therein described, as the same appear of record in this department.

In testimony whereof I have hereunto set my hand and have caused the seal of said department to be affixed on the day and year above written.

[SEAL.] S. J. KIRKWOOD, *Secretary.*
G. M. L.

Book 217 of Deeds, page 300.

This indenture, made this third day of August, in the year of our Lord one thousand eight hundred and fifty-eight, between Joseph Robinson and Maria, his wife, of the town of Leyden, county of Cook and State of Illinois, party of the first part, and John F. Horton, of the city of Chicago and the county and State aforesaid, party of the second part, witnesseth: That the said party of the first part, for and in consideration of the sum of forty-one hundred ($4,100) dollars, in hand paid by the said party of the second part (the receipt whereof is hereby acknowledged and the said party of the second part forever released and discharged therefrom), has granted, bargained, sold, remised, released, conveyed, aliened, and confirmed, and

by these presents does grant, bargain, sell, remise, release, convey, alien, and confirm, into the said party of the second part and to his heirs and assigns forever all the following-described lots, pieces, or parcels of land, situate in the county of Cook and State of Illinois and known and described as follows, to wit:

Commencing nineteen chains and fifty-nine links west of the southeast corner of the north section of Robinson's reservation & two chains and sixty-seven links south of the S. line of said sec., thence west ten chains and seventy-two links to a post witness tree, a white elm twenty inches in diameter, bears west twenty-eight links;
37 thence north eighteen chains & 67 links to a post, thence east ten chains & 72 links to a post witness described in second deed, thence south eighteen chains and sixty-seven links to the place of beginning, containing by estimation twenty acres, be the same more or less.

Also the following, to wit: Commencing at the southeast corner of the north section of Robinson's reservation, thence south sixty-six degrees west six chains & fifty-one links to a post, thence west thirteen chains & sixty-five links to a post, a burr O. — diam., bears S. 36 west 36 links; thence north seventeen chains and sixty-one links to a post of white O. six inches in diam., bears N. $83\frac{1}{2}°$ W. 15 links, a black O. 18 inches in diam. bears S. 79° E. 64 links; thence E. 11 chains & 36 links to a burr oak 24 inches in diam., thence S. 14 chains & 95 links to a post, thence E. 8 chains and 23 links to the place of beginning, containing twenty-one & $\frac{1}{10}$ of an acre, together with all and singular the hereditaments and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof, and all the estate, right, title, interest, claim, or demand whatsoever of the said party of the first part, either in law or equity, of, in, and to the above-bargained premises, with the hereditaments and *and* appurtenances; to have and to hold the said premises above bargained and described, with the appurtenances, unto the said party of the second part, his heirs and assigns forever.

And the said Joseph Robinson and wife, party of the first part, for their heirs, executors, and administrators, do covenant, grant, bargain, and agree to and with the said party of the second part, his heirs and assigns, that at the time of the ensealing and delivery of these presents they are well seized of the premises above conveyed as of a good, sure, perfect, absolute, and indefeasible estate
38 of inheritance in law in fee simple and have good right, full power, and lawful authority to grant, bargain, sell, and convey the same in manner and form aforesaid, and that the same are free and clear from all former and other grants, bargains, sales, liens, taxes, assessments, and incumbrances of what kind or nature soever; and the above-bargained premises in the quiet and peaceable possession of the said party of the second part, his heirs and assigns, against all and every person or persons lawfully claiming or to claim the whole or any part thereof the said party of the first part shall and will warrant and forever defend.

In witness whereof the said party of the first part hereunto set their hands and seals the day and year first above written.

JOSEPH ROBINSON. [SEAL.]
ELLEN MARIA ROBINSON. [SEAL.]

STATE OF ILLINOIS, } ss:
Cook County, }

I, justice of the peace in and for the said Cook county, in the State aforesaid, do hereby certify that Joseph Robinson & Ellen Maria Robinson, who are personally known to me as the same person- whose name- are subscribed to the within instrument of writing, appeared before me this day in person and acknowledged that they signed, sealed, and delivered the said instrument of writing as their free and voluntary act for the uses and purposes therein set forth.

And the said Ellen Maria Robinson, wife of the said Joseph Robinson, having been by me examined separate and apart and out of the hearing of her said husband and the contents and meaning of the said instrument of writing having been by me made
39 known to her, acknowledged that she had freely and voluntarily executed the same and relinquished her dower to the lands and tenements therein mentioned without compulsion of her said husband, and that she does not wish to retract the same.

Given under my hand and seal this 4th day of August, A. D. 1858.

WM. H. GALLUP, [SEAL.]
Justice of the Peace.

No. 46310. Filed July 18th, 1861.

STATE OF ILLINOIS, } ss:
County of Cook, }

I, Norman T. Gassette, clerk of the circuit court and *ex officio* recorder in and for said county, in the State aforesaid, do hereby certify that the annexed is a true copy of the record of a certain instrument filed in my office on the 18th day of July, A. D. 1861, and recorded in Book 217 of Deeds, on page 300.

In testimony whereof I have hereunto set my hand and affixed the seal of our said court, at Chicago, this 1st day of Aug., A. D. 1870.

[SEAL.] NORMAN T. GASSETTE,
Clerk of the Circuit Court and ex Officio Recorder of Cook County.

[5-ct. rev. stamp.]

By patent dated December 28th, 1843, there was granted to "Alexander Robinson, for himself and his children," pursuant to 4th article of treaty between the United States and the united nation- of Chippewa, Ottawa, and Pottawattomie Indians, made at Prairie du Chien July 29th, 1829, two sections of land on the River New
40 Plaines, above and adjoining the tract granted to Claude La Frombois; which two sections contain 1,280 acres and are

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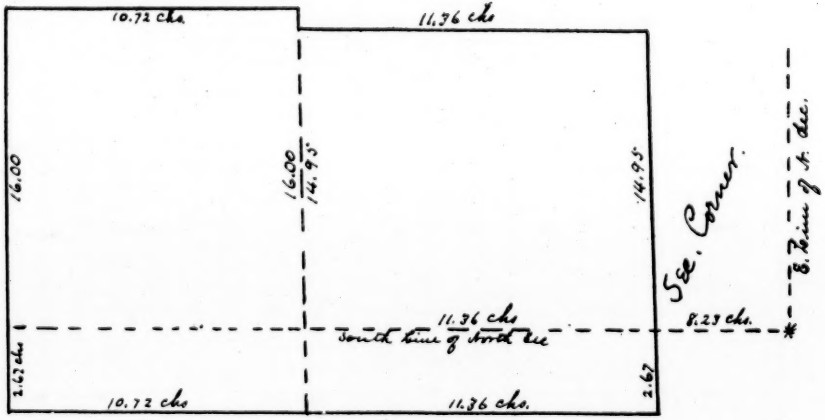

fully described in said patent, which is recorded at Washington in Book 9, pages 334 to 338.

On February 22nd, 1847, Joseph Robinson, a son of said Alexander Robinson, filed his petition for partition of said lands in the circuit court of Cook county, Illinois, against said Alexander Robinson and against David, Cynthia, and Mary Robinson, the remaining children of said Alexander, and by decree entered May 29th, 1848, said court set off and allotted to Joseph Robinson 256 acres, as shown on the following plat, which is attached to the commissioners' report of partition:

(Here follows diagram marked p. 40.)

41 By deed dated August 3rd, 1858, and recorded in Book 217 of Deeds, page 300, of Cook Co. records, Joseph Robinson and Maria, his wife, conveyed to John F. Horton the following-described land: Commencing nineteen chains and fifty-nine links west of the southeast corner of the north section of Robinson's reservation and two chains and sixty-seven links south of the S. line of said section, thence west ten chains and seventy-two links to a post witness tree, a white elm twenty-nine inches in diameter, bears west twenty-eight links; thence north eighteen chains and sixty-seven links to a post; thence east ten chains and seventy-two links to a post witness described in second deed; thence south eighteen chains and sixty-seven links to the place of beginning, containing by estimation twenty acres, be the same more or less.

Also the following, to wit: Commencing at the southeast corner of the north section of Robinson's reservation, thence south sixty-six degrees west six chains and fifty-one links to a post; thence west 13 chains and sixty-five links to a post, a burr oak six inches in diameter, bears S. 36 west 36 links; thence north seventeen chains and sixty-one links to a post of white O. six inches in diam., bears N. 83½° W. 15 links, a black O. 18 inches in diam. bears S. 79° E. 64 links; thence E. 11 chains & 36 links to a burr oak 24 inches in diam.; thence S. 14 chains and 95 links to a post; thence E. 8 chains & 23 links to the place of beginning, containing twenty-one & $\frac{1}{10}$ of an acre;

Which premises are part and parcel of the 256 acres set off and allotted to Joseph Robinson, and are shown on the following plat of a survey thereof (hereto attached) made by Alexander Wolcott, county surveyor of Cook county, Illinois, January 7th, 1870.

(Here follows diagram marked p. 42.)

42 We have examined and find no conveyances by Joseph Robinson of the 20-acre and 21$\frac{1}{10}$-acre tracts described in deed last above mentioned recorded in the recorder's office of Cook county, Illinois, except the deed from said Joseph Robinson to said John F. Horton, recorded July 18th, 1861, in Book 217, page 300.

Chicago, August 8th, 1870.

JONES & SELLERS.

STATE OF ILLINOIS, } ss:
County of Cook, City of Chicago, }

Aquila H. Pickering, being first duly affirmed, deposes and says that he is a resident of the county of Cook aforesaid, and that he is the owner of the following-described premises, situate in the county of Cook and State aforesaid, and that he is the owner of the following-described premises, situate in the county of Cook and State aforesaid, described as follows, to wit:

43 Those certain parts or portions of Robinson's reservation, so called, in township No. forty (40) north, of range No. twelve (12) east, of the third principal meridian: Commencing nineteen (19) chains and ninety-five (95) links west of the southeast corner of the north section of said reservation and two (2) chains and sixty-seven (67) links south of the south line of said section, running thence west ten (10) chains and seventy-two (72) links, thence north eighteen (18) chains and sixty-seven (67) links, thence east ten (10) chains seventy-two (72) links, and thence south eighteen (18) chains and sixty-seven (67) links, to the place of beginning, containing by estimation twenty (20) acres; also commencing at a point in the south line of said north section eight (8) chains twenty-three (23) links west of the southeast corner thereof, running thence north fourteen (14) chains and ninety-five (95) links, thence west eleven chains and thirty-six links, thence south seventeen (17) chains sixty-one (61) links, thence east eleven (11) chains thirty-six (36) links, thence north two (2) chains and sixty-seven (67) links, to the place of beginning, containing by estimation twenty (20) acres, being all (except about one acre) of the premises described in and conveyed by a deed from Joseph Robinson and wife to John F. Horton, dated May third, 1858, and recorded in the recorder's office of Cook county, Illinois, in July 18th, 1861, in Book No. 217 of Deeds, at page 300.

He further deposes and says that he has made diligent search for the original deed from the said Joseph Robinson to the said John F. Horton, so recorded as aforesaid, and that he has been unable to find the same and believes the same to have been lost or destroyed; and further deponent says not.

AQUILA H. PICKERING.

Affirmed to and subscribed before me this 20th day of July, A. D. 1870.

WILLET DORLAND,

44 [SEAL.] *Notary Public for the City of Chicago, Cook County, Illinois.*

STATE OF ILLINOIS, } ss:
Cook County, }

Fernando Jones, being duly sworn, doth depose and say that he has resided in Cook county, Illinois, since the year 1835; that he has dealt largely in real estate in said county and has been engaged in the real-estate business for the past twenty years; that he is and has been well acquainted with the value of lands throughout said

county; that he has been shown a certified copy of a deed from Joseph Robinson and Maria, his wife, to John F. Horton, dated August 3d, 1858, and recorded in Book 217 of Deeds, page 300, of Cook county records, conveying, in consideration of forty-one hundred dollars, twenty (20) acres of land in Robinson's reserve, in the town of Leyden, in said county, described as follows, to wit: Commencing 1,959 chains W. of the S. E. corner of the N. sec. of Robinson's reservation, 267 chains S. of the S. line of said sec., thence W. 10.72 chains to a post witness tree, a white elm 20 inches in diameter, bears W. 28 links; thence N. 18.67 chains to a post; thence E. 10.72 chains to a post witness described in second deed; thence S. 18.67 chains to place of beginning, con. 20 acres; also the following, to wit: Commencing at the S. E. cor. of the N. sec. of Robinson's reservation, thence S. 66° W. 6.51 chains to a post; thence W. 13.65 chains to a post, burr oak 6 inches in diameter, bears S. 36 W. 36 links; thence N. 17.61 chains to a post of W. oak 6 inches in diameter, bears N. 83½° W. 15 links, to a black oak 18 inches in diameter, bears S. 9° E. 64 links; thence E. 11.36 chains to a burr oak 24 inches in diameter; thence S. 14.95 chains to a post; thence E. 8.23 chains to the place of beginning, con. 21.1 acres.

That he has been acquainted with said property since the year 1837 and believes the consideration named in said deed to be all said land was worth at the date of said conveyance.

That he has known said Joseph Robinson ever since he was a child, and that he is and was at the date of said deed above the age of twenty-one years and competent to transact business and manage his property; that the amount paid to said Joseph Robinson was the full value of said land, and that said sale was an advantageous one to him; and further this deponent saith not.

FERNANDO JONES.

Subscribed and sworn to before me this 6th day of August, A. D. 1870.

[SEAL.] ALEXANDER SILLER,
Notary Public.

DEPARTMENT OF THE INTERIOR,
OFFICE INDIAN AFFAIRS, *Jan. 6th*, 1871.

The within certified copy of deed to John F. Horton from Joseph Robinson & Maria, his wife, for a portion of the land reserved for Alexander Robinson and his children by the 4th article of the treaty with the Chippewa, Ottawa, and Pottawattomie Indians, concluded at Prairie du Chien July 29th, 1829, is respectfully submitted to the Hon. Secretary of the Interior, with the recommendation that it be presented to the President for his approval.

E. S. PARKER,
Commissioner.

DEPARTMENT OF THE INTERIOR,
WASHINGTON, D. C., *Jan.* 21*st*, 1871.

The within certified copy of deed is respectfully submitted
46 to the President for his approval.

C. DELANO, *Secretary.*

EXECUTIVE MANSION,
WASHINGTON, D. C., *Jan.* 21*st*, 1871.

The within deed is hereby approved.

U. S. GRANT.

Q. You say you saw the record of the partition deed, and that this particular portion of land which was set off to Joseph Robinson was set forth in the plat which you saw on that deed. What land was conveyed to Joseph Robinson in that partition deed?

A. The same that was set off by the commissioners and decreed by the court and the same that appeared as a part of the partition deed, being the south sixteen chains of the north section and the north sixteen chains of the south section of Robinson's reservation.

Q. And, as I understand you, all the other parties in the partition united in the conveyance, either by themselves or by a representative, of this to Joseph in that partition deed?

A. Yes, sir.

Q. I will ask you, Mr. Jones, whether that was just one partition deed or whether they conveyed one to the other in separate deeds?

A. There was one partition deed.

Q. How would that be shown in the abstract, according to your information, where there was a deed in which there were several parties united granting to each other?

Objected to by counsel for defendant-.

Q. Mr. Jones, did you ever see the record of the deed, how-
47 ever it might be, of the conveyance from the other parties to Joseph Robinson of his interest in this land?

A. Oh, yes; I have seen it very often.

Q. And what particular part was conveyed to him by that deed?

Objected to by counsel for defendant-. Objection overruled; to the overruling of which objection counsel for defendant- then and there excepted.

A. I saw the record of that deed and examined it; am familiar with it and know that there was portions set off to each of the parties, and the part set off to Joseph was the south sixteen chains of the north section and the north sixteen chains of the south section.

Q. The question is what was conveyed to him, not what was set off.

A. Conveyed to him.

Q. By the other parties?

A. Yes; by the other parties, by that general deed and partition describing it by metes and bounds and with the plat attached, and it is identical with the plat found in this abstract.

Q. Do you know whether Joseph Robinson went into possession of the part which was conveyed to him or not? Do you know anything about that?

A. I know that he was in possession of a portion of it. I do not know how far his possession extended.

Q. What part of it, do you know, that he was in possession of?

A. Well, my remembrance of the part that he was in possession of, now, is that it was in the south section.

Q. Do you know of his ever living on this portion—on this part set off in the south part of the north section?

A. My remembrance is that he did not live on the north
48 section, but I do not know as I could locate it.

Q. Did you ever visit, see him, there? Did you ever visit the land while he was on it?

A. Yes; I have passed through it. I have seen him up at the old gentleman's house—at his father's.

Q. Where was that?

A. That was where Cynthia Cooney resided. He lived with her.

Q. What part of the land was that?

A. That was north of this.

Q. North of this sixteen chains?

A. I think so.

Q. Well, what do you know about his being on the south section? What personal knowledge have you upon that subject?

A. I know that he lived on a part of this that was set off to him, but I do not remember the localities; I couldn't tell.

Q. That is all you can say about it?

A. Yes; it was supposed that he was living on a part of this. He was living on a part of the reservation, and I supposed he was living on the part set off to him, but I don't know anything of the lines there—sufficient to know whether he was on one part or another. I have made abstracts of the Joseph Robinson's part, and it shows where it is set off—that is, they have been made in the office, and I am conversant with it—but this abstract here happens to be the only one that I actually examined, the minutes from the original record, so that I could testify that I had actually seen the record as shown there. The other abstracts that I have made of it I remember generally, but I don't think that I made any of the others; made an examination and revised it by the original record, so I
49 could testify that it was correct; that is the reason that I said that I could identify that as having been examined from the record, personally, by myself.

Cross-examination by Mr. HERVEY:

Q. Mr. Jones, I will ask you only one question. Do you remember whether Joseph Robinson lived west of the river? You think he lived on the north part of the south section at some time, do you?

A. I was thinking it was west of the river.

Q. Do you remember that it was west of the river?

A. Well, that is my remembrance. My remembrance as to localities there is not perfect.

Q. You could not state absolutely at all about it, could you?
A. As to the location, not.
Q. He lived somewhere on the reservation?
A. Well, he lived near the line between the north and the south, as I remember.
Q. Now, isn't it your best recollection that he did live west of the river? If he lived on that portion of the south section at all, isn't it your recollection that he did live west of the river?
A. Oh, I think he lived west of the river.

Redirect examination by Mr. DECKER:

Q. Well, this portion set off on the south portion of the north section, and also that which was set off on the north portion of the south section, extended west of the river?
A. Yes; both of them.
Q. I understand you to say that you are very sure of this much, and that is that he lived somewhere on the land that was set off to him out of this section?
50
A. Yes. I have not any question that he lived on the land set off to him, because I know that it was in the vicinity of both the north and the south sections, but I don't remember the exact location. I know how it looked, but I don't know how it was with reference to the lines.
Q. That is, you don't know certainly whether it was on the north or the south section?
A. No; I don't.

Recross-examination by Mr. HERVEY:

Q. But your best recollection is that in whichever section it was it was west of the river?
A. My impression is that it was on the west side of the river, but I have not any very distinct remembrance as to that even.

OWEN COONEY, a witness called on behalf of the plaintiff, having been first duly sworn, testified as follows:

Direct examination by Mr. DECKER:

Q. Where do you live, Mr. Cooney?
A. Chicago.
Q. What is your business?
A. I am in the carriage business at present.
Q. Did you know Alexander Robinson in his lifetime?
A. Yes, sir.
Q. Did you marry into the family?
A. Yes; married his daughter.
Q. Which one did you marry?
51
A. Cynthy.
Q. Did you know Joseph Robinson?
A. I did.
Q. Is he living or dead?
A. Dead.

Q. Do you know anything about there having been a partition of lands among the Robinsons—a partition of Robinson's reserve?

A. Well, I only know what I have seen by the record and heard. They said it was partitioned before I married into the family.

Q. Who were the children of Alexander Robinson?

A. There was Joseph, David, Mary, and Cynthia.

Q. That was all the children?

A. That was all that was alive when I knew the family.

Q. Were they all there, so far as you know?

A. That is all there was alive when the land was partitioned. There was some died before—Margaret and John.

Q. Did they have any children?

A. No; they died before they got married.

(By the COURT:)

Q. When they were children themselves?

A. Yes, sir.

Q. Do you know what portion was set off to Joseph?

Objected to by counsel for defendant-.

The COURT: Let him tell all he knows about it.

The WITNESS: Joseph had half in the north section of his land and half in the south section, sixteen chains in each section, north and south, adjoining on the north of the south section.

Q. When did you learn that?

A. I learned it from being with the surveyors when they
52 surveyed it. We run the lines there a couple of times to get the correct boundary line between us. There was a little dispute among us about the lines and I run it off, I think as much as twice anyhow, with Wolcott and Rossiter and Cheney.

Q. What portion of that land did Joseph occupy? Where did he live?

A. He lived on the north section.

Q. What part of it?

A. On the west side of the river.

Q. Whether on the south sixteen chains?

A. He lived on the north sixteen chains.

Q. You mean the south sixteen chains of the north section?

A. Yes, and on the south corner of it, pretty near; not the corner, but there is a road that comes past there and a field, probably eighty rods back, but he lived out on the road, on the southwest corner of this road.

Q. The southwest corner of the road?

A. Well, yes, of the north section.

(By the COURT:)

Q. In the southwest corner of the north section he lived?

A. Yes, that is on the road; not in the corner of the section, because the sections run back.

(By the COURT:)

Q. Did he live east or west of the river?

A. West of the river.

Q. And on which section, north or south?

A. North section.

Q. Did he live on this sixteen chains taken off the north section?

A. Yes, because the south section don't extend there.

53 Q. Did you ever hear him make any claim as to what portion of the land was his?

A. Oh, of course; always talking about it. I presume there was no dispute about it.

Q. Well, what did he claim as his, Mr. Joseph Robinson?

A. The children all claimed the same—256 acres apiece.

Q. What part of this did Joseph claim?

A. He claimed 256 acres that adjoined in the south section and north section.

Q. How wide on the north section?

A. There was half of it in the north section and half in the south section.

Q. Do you remember the width of each?

A. There was thirty-two chains, and the half of that, I suppose, would be sixteen. It was equally divided in two sections.

Q. And how long did he remain on that?

A. Until he moved away from there—sold out and moved away from there; just about the time of the war, 1865 or 1866; somewhere along there; just about the time the war closed or in that neighborhood; yes, before it closed, 1864 or '5.

Q. While he lived in that place did you hear anything about his selling any portion of that to Horton?

Objected to by counsel for defendant-.

The COURT: Let it go in subject to exception.

Q. Did you hear from Joseph?

The COURT: If you want him to tell what Joseph said let him tell.

The WITNESS: Joseph said he had sold some; made a trade with Horton; sold him some of this land—forty or fifty acres or sixty; I don't know exactly—on the east side of the river.

Q. Who of the family are now living?

54 A. Cynthia, my wife.

Q. The rest all dead?

A. Yes, sir.

Cross-examination by Mr. HERVEY:

Q. When were you married to Miss Robinson?

A. In 1856—the 10th of June, 1856.

Q. That is nearly thirty years ago?

A. Pretty near it, sir.

Q. Were you present when these surveys were made after you were married or before?

A. After I was married.

Q. Well, now, will you let me ask you how old a man you are now, Mr. Cooney?

A. Well, you give me a sticker now, because I don't know my age.

Q. As near as you can get it from the best information you can get.

A. I am in the neighborhood of fifty, somewheres, more or less. I don't know my age.

(By the COURT:)

Q. What time was it you were married?

A. 1856.

(By the same:)

Q. What part of the year?

A. 10th of June.

Q. Have you any recollection as to how old you were at that time?

A. Well, my relations all differed about my age; some said I was twenty-one and some said I was twenty-two.

(By the COURT:)

Q. That would make you, then, fifty or fifty-one?

A. Yes, sir.

Q. When did you see those lines run that you talk about by Wolcott & Cheney and Rossiter?

55 A. We run that through in—we had some run in 1857, I think, or 1858.

Q. That was a year or two after you were married?

A. Yes; my wife and I sold some twenty acres to Charles Van Atta, and in order to get the right survey—we had an interest in the south section, and it seems the corner stones commence in the south section, and we had to run from — way up in order to get that; that was the way it commenced.

Q. You are sure that Joseph lived on part of the north section?

A. Yes, sir.

Q. You are also sure that he did not live on the south section?

A. Yes, sir.

Q. You are sure he lived on the north section west of the river?

A. I am.

Q. And that he did not live or occupy the land east of the river?

A. Yes, sir.

Redirect examination by Mr. DECKER:

Q. What did Joseph do on this land?

A. He farmed it.

Q. What did he do with the land east of the river?

A. It was never fenced in.

Q. Did he use it for any purpose?

A. It was a common while he was out there—that is, it was timber land and it was a runway; we all turned our cattle in and it was never fenced.

Q. Do you know whether he cut any hay there?

A. There was no hay land on it; it was all brush and wood.

Q. Did he cut any wood there?

A. Oh, yes; they cut wood.

56 (By the COURT:)

Q. East of the river?

A. East of the river—yes. They cut all their wood there. There was no timber, you know, on the west side of the river; it is all on the east side of the river. The land was about equally divided in timber and hay. The river ran through the section, and on the east side of the river was timber, and on the west side was our farm land. We didn't have the east side fenced; we had that for a run for the cattle. On the west side we had that fenced and worked it—farmed it.

Q. As I understand you, he cut fire-wood — east side?

A. Yes; of course.

Q. And used it for that purpose?

A. Yes; cut wood and sold wood.

Q. Didn't he have his cattle there, too?

A. Yes, sir.

Recross-examination by Mr. HERVEY:

Q. Well, all the rest of you had your cattle there, too?

A. Yes; it was a run there for ten miles, from Des Plaines station to Lyons, a runway all through the woods.

Q. The rest of you cut wood there, too, didn't you, if you wanted to?

A. If it was on our land.

Q. Didn't you cut on this piece of Joseph's if you wanted? Didn't you cut and didn't your cattle run there?

A. The cattle run there—his run on it and mine—all over.

(By the COURT:)

Q. The inquiry is as to cutting wood; whether you cut here whenever you happened to find it or the rest wanted, or how that was?

A. Oh, no, sir; we had to cut wood on our own land; that wouldn't do.

57 Q. Didn't other people cut wood there, too, if they wanted to—anybody cut wood there that wanted to?

A. If they would buy it they did, from the parties that owned the land.

Q. Well, without buying it?

A. If they were not caught at it I suppose they would. I don't dispute that.

Redirect examination of A. H. PICKERING.

Continued by Mr. DECKER:

Q. When you bought this land did you examine the record of the partition proceedings?

A. I think not. When I first bought it?

Q. Yes.

A. Nothing more than the deeds I had had from Joseph Robinson.

Q. Did you at any time examine the record of the partition proceedings?

A. I did; when we were asking for an approval from the President, Mr. Jones & Sellers——

Q. Did you see the record of the decree of partition in the county court?

A. Yes; I see the record of it in the county court—in the recorder's office.

Q. Did you look at the decree of partition as it was recorded in the county court of Cook county—the county court of common pleas?

A. In 1870—in the fall of 1870. I looked at it when we made application for the approval of the President.

Q. Do you remember what portion was set apart to Joseph Robinson by that decree?

Mr. HERVEY: I understood Mr. Pickering to say he had
58 looked at the decree in the recorder's office, not the county court of common pleas.

Q. I will ask you if you saw anywhere the record of this decree.

A. I did.

Q. Now, where did you see it?

A. I don't believe I can tell you. I went with Mr. Jones and we examined it. It was in the court-house, and we went up and down stairs two or three times and examined several books in regard to the deeds. I had lost my deed. We found the partition deed from Alexander to the children.

Q. Now, I want to know about the decree in the county court of common pleas, separate from the deed—whether you remember seeing the record of the decree.

A. I don't know. I don't remember that I did. I cannot remember about that.

Q. Well, what did you see?

A. I see the deed in which he made the application for the approval, with the plat marking out the section line, so many chains on each side of the line dividing the two sections. I see that plat and I see that deed. I would call it the partition deed you have been talking about.

Q. What was conveyed to him in the partition deed?

A. It was designated there as lot one.

Q. Well, what was that?

A. Well, it was sixteen chains north and south of the section line dividing the north section from the south section.

Q. What do you mean—sixteen chains on both sides or sixteen chains on one side and sixteen on the other?

A. On the other; about thirty-two chains.

Q. Don't you remember looking after the partition pro-
59 ceedings—the proceedings to divide the land?

A. I can't tell you whether it was in the court-room.

Q. I am not asking you where. Do you remember seeing a record of the partition proceedings?

A. I did see this record of the proceedings for partition of the land.

Q. Where did you see that?

A. I see it in the court-house; I cannot tell where.

Q. In that decree which you saw there, was any portion of the land set off to Joseph Robinson?

Objected to by counsel for defendant-. Objection overruled.

A. There was.

Q. What was set off to Joseph Robinson by that decree?

A. A piece on both the north and south of the section line dividing the two sections, sixteen chains wide on each side. I don't remember the length, but it ran across the river. I know there was part of it on each side, as they had it marked.

Q. And did they run clear across the section in each case?

A. I think so.

Q. Well, after seeing that record of the partition proceedings, what did you do then?

A. Well, after we saw that we got a certified copy.

Q. Wait a moment. Did you go there to see the partition deed after seeing the record of the decree?

A. Yes, we did; we seen them both; we went first upstairs, then down-stairs, then upstairs.

Q. You saw first the record of the decree?

A. Yes, sir.

Q. Next you went to see, did you, the record of the partition deed?

60 A. Yes, sir.

Q. Did you find such a record?

A. We did.

Q. Well, in that deed was there any particular land conveyed to Joseph Robinson?

A. There was.

Q. Was it this land you have been speaking of?

A. This land I have just been speaking of.

Cross-examination waived.

Mr. DECKER: I will now offer in evidence and read article four of the treaty between the United States and Alexander Robinson, in the U. S. Stat. at Large, vol. 7, p. 321, which is as follows:

ARTICLE IV.

Certain Tracts to be Granted to Certain Descendants from the Indians.

There shall be granted by the United States to each of the following persons (being descendants from Indians) the following tracts of land, viz:

To Claude Laframboise one section of land on the Riviere aux Pleins, adjoining the line of the purchase of 1816.

To Francois Bourbonne, Jr., one section at the missionary establishment on the Fox river of the Illinois.

To Alexander Robinson, for himself and children, two sections on the Riviere aux Pleins, above and adjoining the tract herein granted to Claude Laframboise; to Pierre Leclerc one section at the village of the As-sim-in-eh-Kon or Paw-Paw grove; to Waish-Kee-Shaw, a Pottawatomie woman, wife of David Laughton, and to her child, one and a half sections at the old village of Nay-on-Say, at or near the source of the Riviere aux Sables of the Illinois; to Billy
61 Caldwell two and a half sections on the Chicago river, above and adjoining the line of the purchase of 1816; to Victoire Pothier one half section on the Chicago river, above and adjoining the tract of land herein granted to Billy Caldwell; to Jane Miranda one quarter section on the Chicago river, above and adjoining the tract herein granted to Victoire Pothier; to Madeline, a Pottawatomie woman, wife of Joseph Ogee, one section west of and adjoining the tract herein granted to Pierre Leclerc, at the Paw-Paw grove; to Archange Ouilmette, a Pottawatomie woman, wife of Antoine Ouilmette, two sections, for herself and her children, on Lake Michigan, south of and adjoining the northern boundary of the cession herein made by the Indians aforesaid to the United States; to Antoine and Francois Leclerc one section each, lying on the Mississippi river, north of and adjoining the line drawn due west from the most southern bend of Lake Michigan, where said line strikes the Mississippi river; to Mo-ah-way one quarter section on the north side of and adjoining the tract herein granted to Waish-Kee-Shaw. The tracts of land herein stipulated to be granted shall never be leased or conveyed by the grantees or their heirs to any persons whatever without the permission of the President of the United States.

Mr. DECKER: I will offer in evidence and read a certified copy of the patent issued by John Tyler, President of the United States, and dated the 28th day of December, 1843, to Alexander Robinson, for himself and children, of two sections on the River Aux Plaines, adjoining the tract granted to Claude La Fromboise, and containing the description by metes and bounds, which is as follows and marked "Exhibit C:"

J. R. D.
J. B. L.

62 DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., *May 12th*, 1881.

I, J. A. Williamson, Commissioner of the General Land Office, do hereby certify that the annexed copy of a patent, dated December 28th, 1843, in favor of Alexander Robinson, is a true and literal exemplification from the records of this office.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

[SEAL.] J. A. WILLIAMSON,
Commissioner of General Land Office.

The United States of America to all to whom these presents shall come, Greeting:

Whereas by the fourth article of the treaty between the United States of America and the united nations of the Chippewa, Ottawa, and Pottawatomie Indians, of the waters of the Illinois, Milwaukee, and Manitouck rivers, made and concluded at Prairie du Chien, in the "Territory of Michigan," now Wisconsin Territory, on the twenty-ninth day of July, one thousand eight hundred and twenty-nine, the United States agreed to grant to "Alexander Robinson, for himself and children, two sections on the River Aux Pleins above and adjoining the tract" "granted to Claude La Framboise;" and whereas under the said article there has been surveyed for the said "Alexander Robinson, for himself and children," two sections of land, containing one thousand two hundred and eighty acres, bounded and described as follows, to wit:

63 Beginning on the north boundary of a survey for six hundred and forty acres of land granted to Claude La Framboise by the same treaty, sixteen chains and fifteen links west of the northeast corner thereof, at a post, from which a black oak fifteen inches in diameter bear- north sixty-nine degrees thirty minutes west, distant one hundred and twenty-one links, marked A. R., with a notche in the blaze below, and a burr oak fifteen inches in diameter bears north twelve degrees east, distant sixty and half links, marked A. R., and with three notches, thence west with the south boundary of this survey and the north boundary of Claude La Framboise's survey, at twenty-seven chains the east edge of a pond three hundred and fifty links wide (it is full of trees), at fifty-seven chains and six links the easterly bank of the River "Aux Pleins," two hundred and ninety-four links wide, running south; at sixty-three chains the northwest corner of La Framboise's survey, at which is a post in the edge of prairie, from which a burr oak twenty-four inches in diameter bears north eighty-three degrees and fifteen minutes east, distant seventy and a half links, marked C. L., under which is a notch in the blaze, and a white oak fifteen inches in diameter bears south forty-four degrees east, distant one hundred and forty-two and a

half links, marked C. L., with a notch in the blaze, eighty chains to the southwest corner of the survey, at which is a mound five feet at the base and five feet high, in pyramidical form, in which is placed a round stone about one foot in diameter, by the side of which is a post in said mound, from which a rock firmly bedded in the ground bears north twenty-three degrees west, distant sixty-nine links; thence north in a prairie eighty chains to a corner of this survey at which is a post in a small mound two feet high and two feet in diameter, from which a burr oak fifteen inches in diameter
64 bears south forty-nine degrees east, distant one hundred fifty-two and a half links, marked A. R., under which is a notch in a blaze, and a burr oak eighteen inches in diameter bears south seventy-eight degrees and forty-five minutes east, distant one hundred eighteen and a half links, marked A. R., with a notch under in a blaze, at three chains and fifty links east of this corner the westerly bank of Aux Pleins river running south thirty-three degrees west; thence west, at nineteen chains a flag pond, twenty-eight chains and fifty links to a prairie stone in the pond for a corner of this survey, said stone being nearly in the shape of an egg and being about sixteen inches long and nine inches in diameter, over which is raised a mound of sod five feet at the base and four feet high, in which is a post; the sod used to erect the mound was dug in a dry place, the centre thereof bearing from the mound north thirty-seven degrees and fifteen minutes west, distant one hundred and forty-five links; thence north, at thirty links leaves the pond, eighty chains and eighteen links to the northwest corner of this survey, in a prairie, at which is a stone fifteen inches long and nine inches in diameter, nearly in the shape of an egg, over which is raised a mound five feet at the base and five feet high, in which is a post; thence east with the north boundary of the survey, at twenty chains and sixty-six links the westwardly bank of the River Aux Pleins, two hundred and fifty-nine links wide, running from northwest to southeast; at forty-seven chains and twenty-five links the east bank of a slough coming from the northwest, eighty chains and seventy-five links to the northeast corner of this survey, at which is a post in the edge of the timber, from which a hickory eleven inches in diameter bears north two degrees and thirty minutes west, distant eighteen links, marked with a blaze and notch, a white oak twenty inches in
65 diameter bears south eighty-four degrees and fifteen minutes west, distant seventy-seven links, marked A. R., with a notch in a blaze, and a black oak ten inches in diameter bears south twenty-two degrees and thirty minutes west, distant fifty-five links, marked A. R., with notch and blaze; thence south eighty chains to a corner of this survey, at which is a post, from which a burr oak fifteen inches in diameter bears south forty degrees and forty-five minutes west, distant two hundred and nine links, and a burr oak thirteen inches in diameter bears south twenty-nine degrees and fifteen minutes east, distant four hundred and forty-three links; both trees are marked with A. R., and under the letters a notch in a blaze; thence east twenty-eight chains and fifty links to a corner of this survey, at which is a post in a mound five feet high and five

feet thick, of a pyramidical form, from which a white oak eleven inches in diameter bears north eighteen degrees and thirty minutes east, distant five hundred and twenty links, marked with a blaze and notch; thence south, at fifty chains leaves wet and low prairie, covered with from four to six inches of water, bearing east and west; at sixty-five chains enters prairie and the north edge of a swamp, mostly two feet deep, at seventy-nine chains and fifty links leaves the swamp, eighty chains to the beginning corner, being in township forty north, of range twelve east, of the third principal meridian, in the State of Illinois:

Now know ye that there is therefore granted by the United States unto the said "Alexander Robinson, for himself and children," and to his and their heirs, the tract of land above described; to have and to hold the said tract of land, with the appurtenances, unto the said Alexander Robinson, for himself and children, and to his or their heirs and assigns forever, "but never to be leased or conveyed" by him, them, his or their heirs, "to any person whatever without the permission of the President of the United States."

66 In testimony whereof I, John Tyler, President of the United States, have caused these letters to be made patent and the seal of the General Land Office to be hereunto affixed.

Given under my hand, at the city of Washington, the twenty-eighth day of December, in the year of our Lord one thou-
[L. S.] sand eight hundred and forty-three, and of the Independence of the United States the sixty-eighth.

By the President: JOHN TYLER,
By R. TYLER, *Sec'y.*

J. WILLIAMSON,
Recorder of the General Land Office.

Deposition of LEON STRAUSS offered in evidence and read on behalf of plaintiff as follows:

The deposition of Leon Strauss, of the county of Barbour and State of Alabama, a witness of lawful age, produced, sworn, and examined upon his corporal oath on the fifth day of May, in the year of our Lord one thousand eight hundred and eighty-four, at the office of A. H. Merrill, in the city of Eufaula, in the county of Barbour and State aforesaid, by me, A. H. Merrill, a commissioner duly appointed by *dedimus potestatem* or commission issued out of the clerk's office of the superior court of Cook county, in the State of Illinois, bearing teste in the name of John J. Healy, Esq., clerk of the said superior court of Cook county, with the seal of said court affixed thereto and to me directed as such commissioner, for the examination of Leon Strauss, a witness in a certain suit and matter in controversy now pending and undetermined in said superior court of Cook county, wherein Aquila H. Pickering
67 is plaintiff and John Lomax and William Kolze are defendants, in behalf of the said plaintiff, as well *as* upon the cross-interrogatories of the said defendants as on the interrogatories of the said plaintiff, which were propounded to said witness orally, and upon none others.

The said LEON STRAUSS, being first duly sworn by me as a witness to said cause, previous to the commencement of his examination, to testify the truth as well on the part of the plaintiff as the defendant, in relation to the matters in controversy between the said plaintiff and defendant, so far as he should be interrogated, testified and deposed as follows:

Int. first. What is your name, age, where do you live, and what is your occupation?

Ans. My name is Leon Strauss; am sixty years old; lives in the city of Eufaula, Alabama, and am minister and teacher.

Int. 2. Did you ever reside in Cook county, Illinois; if yea, where, and what was your occupation while residing there?

Ans. 2. I lived in Cook county, Illinois, from 1855 to 1868. During the first three years of that time I was clerk in an abstract-of-title office, being in the employ of Thomas B. Bryan; afterward in the same office, in the employ of Greenbaum and Guthman, who had bought out Mr. Bryan. For the balance of my residence in Chicago I carried on business for myself as a real-estate agent, loan broker, examiner of titles, and conveyancer.

Int. 3. State whether or not you are acquainted with two certain sections of land in the town of Leydan, Cook county, Illinois, known as Robinson's reserve.

Ans. 3. I know said Robinson's reserve. I know from the recorded plat thereof that that tract of land was divided into
68 two parts, called respectively the north section and the south section. I have also been on said reserve.

Int. 4. What recorded plat do you refer to?

Ans. 4. The plat of the subdivisions of said reserve made between Alexander Robinson and his children, which I saw on record in the recorder's office in Cook county, Illinois.

(Objected to by defendants' attorney as being secondary evidence and improper.)

Int. 5. State whether you knew Joseph Robinson in his lifetime, being the Joseph Robinson who was the son of Alexander Robinson, formerly of the town of Leydan, in said Cook county.

(Objected to by defendants' attorney as being leading.)

Ans. 5. I did not know Joseph Robinson.

Int. 6. State whether you were acquainted with John F. Horton, formerly of said county of Cook; and, if yea, how long and how intimately.

Ans. 6. I knew John F. Horton, of the city of Chicago. I was acquainted with him for about three years; was never on terms of intimacy with him. My acquaintance with him was only passing, and had occasionally some business in the office when he was present.

Int. 7. State, if you know, if John F. Horton ever went by any other name; and, if so, what; whether he spelled his name in different ways and how, and whether he had different ways of making his signature; and, if yea, what were the different ways. State

fully all the knowledge you have in relation to the subject-matter of this interrogatory.

Ans. 7th. I know that said John F. Horton had also another name, which was John F. Hortmann. He spelled his name generally John F. Horton, but also on occasions John F. Hortmann, but he
69 always signed his name John F. Horton. I know this from himself, and especially through an incident which transpired in my presence, in my office. Some time in the year 1859 or 1860—I cannot give the precise time, but distinctly remember that it was but a short time prior to the secession of the Southern States—the said John F. Horton came to my office in company with one Peter Shimp, a well-known real-estate agent of Chicago. Said Shimp came for the purpose of calling for an abstract of title of some property, which I was then making for him. The two men had with them a memorandum of some trade they were making between themselves, made out in duplicate. They requested me to witness their signatures. They then signed both papers in my presence, and I witnessed them. The said Horton signed his name John F. Horton on both papers. The abstract for which Mr. Shimp had come was not quite finished. I had some more writing to do to it, and the two gentlemen decided to wait for it until it was ready. While thus waiting they carried on a conversation between themselves, showing a high degree of intimacy to exist between them. Among other things then said, Shimp said to Horton, "John, I think you must be a relation of my wife. You came from Pennsylvania and so does my wife, and your real name is the same as her family name." To this Horton replied, "That is not so. Your wife's family name is Hartman, and he spelled the name H-a-r-t-m-a-n; but my family name is H-o-r-t-m-a-n-n, spelling the name that way. All the members of my family spell the name that way, but I always sign my name John F. Horton." Shimp then asked, "What makes you go by the name of Horton?" to which Horton replied, In the circles in which I am moving and among the parties with
70 whom I am doing business it would be a disadvantage to me to be considered a German.

(Objected to by defendants' attorney as being desultory conversation between two persons upon matters and things not connected with the subject-matter of this suit, and that said John F. Horton's statements cannot be used to his own and plaintiff's advantage herein.)

Int. 8th. State, if you know, whether the said John F. Horton is now living or dead; and, if dead, when and where he died, and if he left an estate in Cook county, Illinois.

Ans. 8th. I know that the said John F. Horton is dead. He died in the city of Chicago, at the end of July or beginning of August, 1861. He left an estate in Cook county, Illinois.

Int. 9th. State whether you were familiar with his estate; and, if yea, to what extent you were cognizable of his affairs at the time of his death.

Ans. 9th. I was not acquainted with his estate in his lifetime, and at the time of his decease——

Int. 10th. State whether said Horton died intestate.

(Objected to by defendants' attorney as being not the proper way to prove such intestacy.)

A. 10th. To the best of my knowledge, said Horton died intestate, from the fact that I and others made diligent search for a will made by said Horton and could not find any; neither could I find any person who knew anything of the fact that said Horton ever made any will. This search was made in and among the effects of said Horton.

Int. 11. State whether, to your knowledge, there was an administration upon the estate of said Horton; and, if yea, in what court and where?

Ans. 11th. To my knowledge, there was an administration
71 upon the estate of the said John F. Horton in the county court of Cook county, Illinois.

Int. 12. State, if you know, who was appointed administrator, and if afterwards any other person was appointed; and, if so, who such other person was and why appointed.

(Objected to by defendants' attorney because it tries to establish by oral testimony that which should properly be a matter of record, and no foundation is laid for the introduction of such proof.)

Ans. 12th. Within a few days after the death of said Horton, Benjamin H. Skinner, of Chicago, applied for letters of administration on the estate of said Horton, as a creditor of the said estate, in said county court of Cook county, and thereupon said court issued letters of administration to said Benjamin H. Skinner; but in a very short time thereafter William B. Hortmann, a brother of deceased, from Pennsylvania, came to Chicago, and, through Arthur W. Windett, applied to the said court for an order to revoke the letters of administration so issued to said Skinner, and that such letters of administration may be issued to himself. The proceedings in this case transpired in my presence, and upon this application the court revoked the letters of administration to said Skinner, but did not grant any letters of administration to said William B. Hortmann for the reason that he was a non-resident. Very shortly thereafter I myself applied to the said court, as a creditor of the estate of said deceased, to be appointed administrator thereof. I was appointed administrator *de bonis non* of said estate, and letters of administration *de bonis non* on said estate were issued to me.

72 (Objected to by defendants' attorney as being improper testimony to prove the matters and things contained in said answer.)

Int. 13. Have you the original letters of administration *de bonis non* issued to you in said estate, or any other original papers relating to said estate, or any deeds or other documents relating to any

real estate of which said Horton may have died seized? If you have them not, where were they when you last saw them?

Ans. 13. I have none of the original papers enquired about. The original letters of administration *de bonis non* were lost by me. Other court papers and a deed to property in Winnebago county were filed in the county court of Cook county, and all other deeds relating to the property of said estate I delivered to one Henry H. Dyer, at Chicago, some time in October, 1866, and I have not had or seen them since.

Int. 14. When, or about when, was the petition for letters of administration upon the estate of said Horton filed in court and the proceedings had in said court? Why was said first administrator removed? State whether it was determined by said court who were the heirs of said Horton, deceased; and, if yea, who were the persons so found to be his heirs. State whether any, and, if yea, what, notice to present claim was published and posted, and how; whether you prepared and filed, as administrator *de bonis non* of said estate, an inventory of the property belonging to said estate, so far as the same come to your knowledge or you could ascertain the same. What real estate, if any, was found by you and included in said inventory? What personal property, if any, was included therein.

73 State whether appraisers were appointed by the court; if yea, name them, if you can. State whether or not said appraisers appraised said property and filed an appraiser's bill thereof. If yea, at how much was the personal property appraised therein? What accounts, if any, did you file? What was the amount of the claims allowed, and what was realized from the personal property, and what was the deficiency, if any, and what did your accounts filed show in respect to such claims and deficiency? And state generally all you can remember in respect to the proceedings in said court, to the course of said administration down to and including any account or accounts you may have filed showing claims against said estate and a deficiency of personal property to pay the same.

(Objected to by defendants' attorney because it is leading in part and too general and sweeping in its terms, embodies too many subjects, and is improper and irrelevant.)

A. 14. Skinner's petition for letters of administration was filed Aug. 2, 1861, heard, and letters issued same day. Upon the petition of William B. Hortmann, alleging that the letters of administration to said Skinner were erroneously issued, because the sixty days had not expired, within which time the next of the kin could apply for letters of administration, said petition alleging also that petitioner was brother to deceased. Upon hearing of this petition, on September 27, 1861, the court issued an order declaring, having found the facts alleged in said petition true, that the letters issued to Skinner were erroneously issued, and they were revoked. It was determined by said court on filing an affidavit of heirship, filed by Wm. B. Hortmann, who were the heirs of the said deceased. They were John Hortmann, the father of the deceased; Wm. B. Hortmann &

Abraham B. Hortmann, brothers of the deceased; Mary
74 Elizabeth Ritter, wife of Isaac Ritter, and Sarah Ann Bennett, wife of John Bennett, sister of deceased. I drew six notices, dated Nov. 28th, 1861, and posted them myself in six of the most public places in Cook county, to wit, one at the door of the court-house, in said county; one at the door of the post office, one at Randolph-street bridge, one at Clark-street bridge, and the other two in places I do not now remember, all in the city of Chicago, Cook county, notifying all persons having claims against the estate of John F. Horton, deceased, to present them for adjudication at the county court on the 3rd Monday of January, 1862. I also caused the same notice to be published in the Chicago Post, a newspaper then published in the city of Chicago, for six successive weeks. I filed an affidavit in said court as administrator *de bonis non* of said estate that I had posted up six notices; also a printed copy of said notice, attached to which was the printer's certificate of publication, certifying that the said notice was published in the Chicago Post for six successive weeks, to wit, 36 times; that the date of the paper containing the first insertion thereof was November 30, 1861, and the last January 18, 1862. All of such notices were given by me as administrator *de bonis non* of the estate of said John F. Horton, deceased. I prepared an inventory of all of the property belonging to said estate as far as the same came to my knowledge and as far as I could ascertain, belonging to said estate, and filed the same in said court on the 6th day of December, 1861. The following real estate was found by me as belonging to said estate and included in said inventory, to wit: An 80-acre tract of land
75 near Sugar creek, in Winnebago county, Illinois, the description of which I do not remember, and also two tracts of land, land tract of "Robinson's reserve," in Cook county, Illinois, described as follows: Commencing $19\frac{59}{100}$ chains west of the southeast corner of the north section of Robinson's reservation and $2\frac{67}{100}$ chains south of the south line of said section, thence west $10\frac{72}{100}$ chains to a post witness tree, a white elm 30 inches in diameter, bears west 28 links; thence north $18\frac{67}{100}$ chains to a post; thence east $10\frac{72}{100}$ chains to a post witness described in second deed; thence south $18\frac{67}{100}$ chains to the place of beginning, containing twenty (20) acres; also the following, to wit:

Commencing at the southeast corner of the north section of Robinson's reservation, thence south 66° west $6\frac{57}{100}$ chains to a post; thence west $13\frac{65}{100}$ chains to a post, a burr oak six inches in diameter, bears south 36° west 36 links; thence north $17\frac{61}{100}$ chains to a post, a white oak 6 inches in diameter, bears north $83\frac{1}{2}$° west 15 links; a black oak 18 inches in diameter bears south 9° east 64 links; thence east $11\frac{36}{100}$ chains to a burr oak 24 inches in diameter; thence south $14\frac{95}{100}$ chains to a post; thence east $8\frac{23}{100}$ chains to the place of beginning, containing $(21\frac{1}{10})$ twenty-one and $\frac{1}{10}$ acres.

Of the personal property included in said inventory I remember the following: 3 horses, a gold watch, a gold watch-chain, two paintings, a leather trunk, and some wearing apparel.

Appraisers of said estate were appointed by said court by an order

dated Oct. 2, 1861, to wit, James Smith and James Dalton; said appraisers appraised the personal property of said estate in my presence and delivered unto me their bill of appraisement thereof, which I filed in the said court on the 16th day of December, 1861. The total value of the property thus appraised was $323.16. I filed
76 one account with said estate or administrator *de bonis non* of receipts and disbursements on the 27th day of February, 1863, showing receipts from the sale of said personal property $735.73 and disbursements $505.54. On March 26, 1863, I filed an account of the claims allowed by the court, amounting to $8,165.40; cash in the hands of the administrator, $239.19; consequently a deficiency of $7,934.21; all of which accounts were audited and approved by the court.

I filed a final account some time in July, 1865, which was also approved by said court, and the court discharged me as administrator of said estate. Said account showed a deficiency of assets to pay the debt.

Int. 15th. State whether any, and, if so, what, proceedings were taken in said court to sell the real estate of which said Horton died seized.

A. 15th. Proceedings were taken in said court to sell the real estate belonging to said estate, which had been inventoried on the 31st day of March, 1863. I, as administrator *de bonis non* of the estate of John F. Horton, deceased, filed a petition in said court for the sale of the real estate against John Hortmann, William B. Hortmann, Abraham B. Hortmann, Mary E. Ritter and Isaac Ritter, her husband; Sarah A. Bennett and John Bennett, her husband, and unknown parties; that petition alleged in substance that John F. Horton, alias John F. Hortmann, died on or about the 1st day of August, 1861, intestate and unmarried, and leaving him surviving John Hortmann, his father; William B. Hortmann, his brother; Mary E. Ritter, wife of Isaac Ritter, and Sarah Ann Bennett, wife of John Bennett, his sisters; but there was another brother, Abraham B. Hortmann, who had not been heard from in eight years and it was unknown
77 whether he was dead or alive, and, if dead, whether he left surviving him a wife and issue, and that these persons named and the persons referred to as unknown are the only heirs of John F. Horton, deceased; that on October 2nd, 1861, letters of administration *de bonis non* upon the estate of said deceased were issued by the county court of Cook county to petitioner.

That an inventory of all the real and personal property belonging to the said estate and the bill of appraisement have been duly filed in said court, and a true account showing balance on hand from money received from the sale of personal property, amounting to $231.19, and that the claims allowed by said court against said estate amounted to $8,165.40, and that there is, therefore, a deficiency of $7,934.21, besides interest, cost, and charges of administration, and that the personal estate is insufficient to pay said claims; that said deceased died seized of the following-described real estate. The petition then describes *verbatim et literatim* the same property as described in the inventory. The petition then prays for an order

for the sale of said real estate for the payment of the debts of said deceased. I drew the petition, signed and filed it in court.

Int. 16th. What was the order of court made in response to said petition for the sale of said real estate, and what proceedings were had in said court prior to the granting of said order, and the date of said order and its contents, so far as you know?

A. 16. The court issued the summons to all of the defendants named and referred to in the petition dated March 30th, 1863, returnable on the 3rd Monday in May, 1863; which summons was returned by the sheriff with the following endorsement on the
78 back thereof: "The within-named defendants not found in my county, after diligent search, this 18th day of May, 1863;" signed with the sheriff's name, by Homer B. Galpin, deputy. The sheriff's name I do not now remember. I, as administrator *de bonis non* of said estate, on the 30th of March, 1863, filed an affidavit in said court deposing that all the defendant- to the said petition, naming them as hereinbefore named, were non-resident- of the State of Illinois. The court, on said last-named day, issued a notice thereupon to all of the said defendants to appear on the 3rd Monday in May next in said court, to plead, answer, or demur to the said petition; which said notice was published in the Evening Post, a newspaper published in the city of Chicago, for four successive weeks. I filed the printer's certificate of publication of said notice, with a copy of said notice thereto attached, certifying that the appended notice was published in the said newspaper for four successive weeks, to wit, twenty-four times, the first paper containing the same dated March 31st, 1863, and the last paper May 1st, 1863. The case then came up for hearing in said court upon the 23rd day of July, 1863, and on the same day the court made and entered an order which in substance declared the petition taken as confessed, none of said defendants having appeared, as against all of said defendants, viz., John Hortmann, William B. Hortmann, Abraham B. Hortmann, Mary E. Ritter, and Isaac Ritter, Sarah A. Bennett, and John Bennett, by default. The order further in substance says: It appearing to the court that the material allegations in said petition are true, it is ordered, adjudged, and decreed that the said administrator *de bonis non* (Leon Strauss) of the estate of John F. Horton, deceased, in conformity with the statute in such case made
79 and provided, proceed to make sale of all the estate, right, title, and interest which was of said John F. Horton at the time of his decease in and to the lands in said petition (and in this decree) described; that the said administrator *de bonis non* sell said pieces of land separately, and in the order in said petition mentioned, for cash and not on credit; that said administrator, before executing any deed or deeds to the purchaser or purchasers thereof, report his proceedings in the premises to this court for approval and confirmation. This decretal order contained a description of the lands identical with the description of the same as set forth in the petition for their sale and in the inventory filed in said court of the lands belonging to the estate of John F. Horton, deceased.

The petition for the sale of these lands set them forth in follow-

ing order, to wit: First, the tract in Robinson's reserve, described as containing twenty acres; 2nd, the tract in Robinson's reserve, described as containing 21.1 acres, and lastly the tract in Winnebago county.

Int. 17. State what you, as administrator *de bonis non*, did, in pursuance of such order of sale of said real estate mentioned in your answer to the last interrogatory, and which was embraced in the order of sale made by said court.

A. 17. On the 24th day of July, 1863, I drew up six notices, all dated on that day, that I, as administrator *de bonis non* of the estate of John F. Horton, deceased, would, on the 17th day of September, 1863, at the hour of ten o'clock a. m., at the north door of the court-house, in the city of Chicago, in the county of Cook, State of Illinois, sell at public auction, to the highest bidder for cash, all the estate, right, title, & interest, which was of the said John F. Horton at the time of his decease, in and to all the following-de-
80 scribed lands & premises, situated in the county of Cook, State of Illinois, to wit: The notice then set forth the descriptions respectively of the said two tracts of land in Robinson's reserve, in Cook county, Illinois, as set forth in the inventory of the estate of said John F. Horton in the petition for their sale, and in the order of sale thereof, precisely as described and set forth in said inventory, petition, and order of sale. On the same day I commissioned a man by the name of Theodore Jancovins to post up said notices in six of the most conspicuous places in said Cook county. I also caused a copy of said notices to be published in the Chicago Post, a newspaper published in Chicago, for six successive weeks. Said Jancovins did post up the six notices above mentioned in six of the most public places in said county. Pursuant to said notices I did, on the 7th day of September, 1863, at 10 o'clock a. m., as administrator *de bonis non* of said estate, proceed to sell said property described in said notices, at the north door of the court-house, in said Cook county, in said city of Chicago, and offered the said property for sale at public auction, to the highest bidder for cash, in the order in which they are mentioned in the decretal order and in the notices. At that *that* sale Moses W. Baer offered seven and $\frac{75}{100}$ dollars per acre for the twenty-acre tract, amounting to $155 00, and, he being the highest bidder at such sale, the said tract of 20 acres of land was stricken off to him at that price. At the same sale the said Moses W. Baer also offered $7.75 per acre, amount- to $163.53, for the tract of land containing 21.1 acres in the decretal order and the above-mentioned notices described; and he being the highest bidder for the said tract of 21.1 acres, the same was stricken*ed* off to him at that price. I did not at that time make an at-empt to sell the land in Winnebago county.

81 Int. 19. State whether you made report of said sale to the court and what proceedings were had by said court upon said report; give contents of said report or the substance thereof and the contents or the substance thereof of the order of the said court made thereupon.

A. On Oct. 6, 1863, I filed a report in the said county court of Cook

county, which in substance stated that, in pursuance of said decretal order of sale of said land, I, as administrator *de bonis non* of the estate of John F. Horton, deceased, did cause the following notice to be posted up in six of the most public places in said Cook county, and also to be published for six consecutive weeks in the Chicago Post, a newspaper published in said city of Chicago. The report sets forth *verbatim et literatim* the notice of sale last referred to. The report then proceeds to say that, in pursuance of said notices, I, as administrator *de bonis non* as aforesaid, did, on the 7th day of September, 1863, at the hour of 10 o'clock a. m., at the north door of the court-house, in the said city of Chicago, proceed to make sale of the property in said notices described, and that at the said sale Moses W. Baer bid for the tract of 20 acres first in said notice mentioned $7.75 per acre, amounting to $155, and, he being the highest bidder for said tract of land, — was stricken off to him by me at that price; also that at the same sale the said Moses W. Baer bid for the tract of land of 21.1 acres, second in said notice described, the sum of $7.75 per acre, amounting in all — $163 53, and, he being the highest bidder, the said tract of 21.1 acres was at that sale also stricken off by me to the said Moses W. Baer. To this report, when I filed it into court, I attached a copy of the said notices of
82 sale, to which was appended the affidavit of Theodore Jancovins, deposing that on the 25th day of July, 1863, he posted up six copies of the appended notices in six of the most public places in said Cook county, designating the places. I also attached to the said report the publisher's certificate of publication of the printed notice, with a copy thereof appended, certifying that such notice was published in the Chicago Post, a newspaper published in the city of Chicago, for six successive weeks, to wit, 36 times, and that the first paper, containing the first insertion, was dated July 25, 1863, and the last September 7, 1863.

On the 6th day of October, 1863, this report came up for hearing in the said county court upon my motion as such administrator *de bonis non* of said John F. Horton's estate for the approval and confirmation of the respective sales of the said two tracts of land in said report contained to the said Moses W. Baer; and the court thereupon, after examining the proofs of posting up and publishing the notices of the sale and being advised in the premises, entered an order stating in substance that the sales of the two pieces of land to the said Moses W. Baer, amounting to $318.53, be confirmed, *at* that said administrator *de bonis non*, to wit, Leon Strauss, execute, sign, and deliver a proper deed or deeds of conveyance of the premises sold to the said Moses W. Baer.

Int. 19. State whether, in pursuance of said sale mentioned in your last answer, you executed or delivered a deed conveying the lands so sold to said Baer; if yea, describe said deed fully.

A. 19. In pursuance of said sale and the clause embodied in the order of confirmation of the court, I, as administrator *de*
83 *bonis non* of the estate of John F. Horton, deceased, made a deed to Moses W. Baer; the said deed was dated on the 6th day of October, 1863; the consideration was $318.53. This deed

set forth that I, as such administrator in the matter of the estate of John F. Horton, deceased, had, on the 31st day of March, 1863, filed a petition in the county court of Cook county, Illinois, for the sale of the real estate belonging to the estate of the said John F. Horton, deceased, for the payment of the debts of the said estate; that such proceedings were thereupon had that on the 23rd day of July, 1863, the said court issued the following order and decree. The deed then recited the order of sale fully, to which I have referred in this examination. It also recited in full the notice of the sale, to which I have testified as being given of the sale. The deed then went on stating that in pursuance of said order and notice the said administrator *de bonis non* did, on the 7th day of September, 1863, at the hour of 10 a. m., at the north door of the court-house, in the city of Chicago, in Cook county, offered for sale at public auction, to the highest bidder, for cash, all the right, title, and interest which was of said John F. Horton at the time of his decease in and to the premises in this deed described, and that at said sale Moses W. Baer bid $7.75 per acre for the tract of twenty acres in Robinson's reservation, in Cook county, Illinois, first in said order of sale and notice of sale mentioned, and he being the highest bidder therefor, said tract of land was stricken off to him at that price, amounting to $155.00; also at the said sale the said Moses W. Baer offered for the tract of 21.1 acres in Robinson's reserve, Cook county, Illinois, in the said decretal order and notice
84 second mentioned, the sum of $7.75 per acre, amounting in all to $163.53, and he being the highest bidder, the said tract of 21.1 acres was also stricken off to the said Moses W. Baer, and he declared the purchaser of both of said tracts. The deed further recites that on the 6th day of October, 1863, the said administrator *de bonis non* made report of the said two sales to the said Moses W. Baer to the court, and that upon hearing the said report, and the court being fully advised in the premises, the court ordered that the said sales to the said Moses W. Baer be confirmed, and that the said administrator *de bonis non* execute, sign, acknowledge, and deliver to the said Moses W. Baer proper deeds of conveyance of the premises so sold as aforesaid. This deed then further recites that in pursuance of the premises and in consideration of the sum of $318.53, by virtue of the power vested in him as administrator *de bonis non* as aforesaid, and in obedience to the various orders of the said county court of Cook county entered in this matter, the said Leon Strauss, as administrator *de bonis non* of the estate of said John F. Horton, deceased, has granted, bargained, sold, conveyed, and confirmed, and by these presents do grant, bargain, sell, convey, and confirm, unto the said Moses W. Baer, his heirs and assigns, all the right, title, and interest which was of the said John F. Horton at the time of his decease in and to those certain pieces, tracts, or parcels of land situate in the county of Cook, State of Illinois, known and described as follows, to wit: Then the deed described the said two tracts of land in Robinson's reserve, Cook county, Illinois, in the same order and by precisely the same descriptions by which they were described in the inventory, petition

of sale, order of sale, and notice of sale hereinbefore mentioned, adding to said description the words: situate in township 40
85 north, range 12 east, of the third principal meridian. I signed that deed as administrator *de bonis non* of the estate of John F. Horton, deceased. I attested to the execution of said deed by the words: Witness my hand and seal on the day and year first above written; signing my name thereto with scroll seal following it. I acknowledged the said deed before a notary public having his office in the same building as mine, whose name I do not now remember.

The Certificate of Acknowledgment.

THE STATE OF ILLINOIS, }
County of Cook, City of Chicago. }

I, —— ——, notary public in and for the said city of Chicago, in the county and State aforesaid, do hereby certify that this day personally appeared before me Leon Strauss, personally known to me as the person whose name is signed to the annexed and foregoing instrument of writing as having executed the same, and acknowledged that as administrator *de bonis non* of the estate of John F. Horton, deceased, he signed, sealed, and delivered the said instrument of writing freely and voluntarily for the uses and purposes therein set forth.

Witness my hand and notorial seal this 6th day of October, 1863.

This certificate was signed by said notary, and he affixed his notorial seal in my presence. I then and there delivered said deed so acknowledged to the said Moses W. Baer.

(It is agreed by and between the counsel for the plaintiff and defendants who are present at this examination that the defendants shall have the right to make any objections they see fit to interrogatories 14, 15, 16, 17, 18, & 19, and the answers thereto, provided they give notice in writing of the specific grounds of objection thereto to counsel of plaintiff for one day before the hearing thereof.)

Int. 20. Were you ever on the lands conveyed by said last-
86 described deed to Baer, and did you ever make a comparison of *a* descriptions of the lands as contained in said deed with the actual location of said lands?

A. 20. Some time in the month of September, 1862, contemplating the filing of a petition for the sale of said lands, I went upon said lands for the purpose of judging of its value, and also of ascertaining whether there were any persons on the land in adverse possession of the same, so that if such were the case I might make them defendants to the petition for the sale of the lands and for general purposes. In order to assure myself of being on the very lands for the sale of which I wanted to file a petition and which were inventoried as part of the said estate, I took with me Mr. Charles Herrenkind, a deputy county surveyor of said Cook county, and a deed in my possession from Joseph Robinson and his wife to John F. Horton,

which deed contained the same description of the two tracts in Robinson's reservation set forth in the inventory, petition of sale, notice of sale, and order of sale hereinfore mentioned. The said surveyor then and there traced the lines of said two tracts for me, I acting as chain-bearer, by the description of the same set forth in said deed. I then went over the whole ground included in said lines, making a general inspection thereof. I found no one in possession and took formal possession.

Int. 21. Are you familiar with the subdivision of the two sections of land known as Robinson's reserve among the patentees, Alexander Robinson and his children?

A. 21. Yes.

Int. 22. State your knowledge and recollection of the subdivisions of said land, telling all you know about it, the source of your information, and what such subdivisions were.

87 (Objected to by defendants' attorney as indefinite and otherwise improper.)

A. 22. I have seen and on several occasions examined a plat on file in the recorder's office of Cook county, Illinois, entitled Map of subdivisions of Robinson's reservation, in Cook county, Illinois; also a copy of the said map, recorded in the Book of Maps No. 1 or No. 2 of the records in said recorder's office. I recollect that the premises shown on this map were divided by a line running east or west or nearly so in two sections, marked, respectively, north section and south section. The section marked north section showed a piece of land in its form rectangular or nearly so. The piece marked south section had for its southerly boundary a line running obliquely in a southwesterly direction, making a triangular piece of said section. I do not recollect whether that oblique line touched the northeast corner of said south section, or if said south section extended to any distance by a straight north and south line from its northeast corner to an intersection with said oblique line. I recollect having seen the names Alexander Robinson, Joseph Robinson, and also of other persons, written, respectively, on portions of the land represented by said map.

Int. 23. State, if you know, whether any deed of conveyance was given by Joseph Robinson to said John F. Horton in relation to any lands claimed by said Robinson and located in said Robinson reserve. If yea, state all you know about it.

Ans. 23. A deed purporting to be a deed from Joseph Robinson & Maria, his wife, to John F. Horton, conveying the two tracts of land in Robinson's reservation, in Cook county, Illinois, described in the inventory, petition for sale, notice of sale, & decree, & order of sales herein mentioned, came into my hands as adminis-
88 trator *de bonis non* of the estate of the said Horton, deceased, among the effects belonging to said estate. I don't remember ever having seen Robinson or his wife. The deed was in form what is known as a warranty deed; was dated August 3, 1858, and was recorded, according to the recorder's endorsement on the book thereof, in the records of Cook county, Illinois, in said recorder's

office, on July 18th, 1867, in Book 217 of Deeds, on page 300, and read, in substance, as follows:

This indenture, made this 3rd day of August, in the year 1858, between Joseph Robinson & Maria Robinson, his wife, of the county of Cook, in the State of Illinois, parties of the first part, and John F. Horton, of the county and State aforesaid, of the second part, witnesseth:

That the said parties of the first part, for and in consideration of the sum of $4,100, to them, cash in hand, paid by the said party of the second part, the receipt whereof is hereby acknowledged, have this day granted, bargained, sold, conveyed, remised, released, aliened, and confirmed, and by these presents do grant, bargain, sell, convey, remise, release, alien-, and confirm, unto the said party of the second part, his heirs and assigns, all the following-described pieces or parcels of land, situated in the county of Cook, State of Illinois, described as follows, to wit: (The deed then gave the same description of the two tracts of land in Robinson's reservation, in Cook county, Illinois, set forth in the inventory, petition for sale, notice of sale, and decretal order of sale hereinbefore mentioned.)

To have and to hold the said described premises, with all and singular the tenements, privileges, and appurtenances thereunto belonging and appertaining, to the said party of the second part, his heirs and assigns forever.

The deed contained the usual covenants of seizure and warranty and clause of execution in the words, "Witness whereof the
89 said parties of the first part have hereunto set their hands and fixed their seals on the day and year first above written."

Signed to this deed were the names of Joseph Robinson & Ellen Maria Robinson and a small seal following each name. Appended to this deed was the certificate of acknowledgement by a justice of the peace of said Cook county, Illinois, whose name I do not remember, which was in substance as follows:

STATE OF ILLINOIS, }
County of Cook. }

I, —— ——, a justice of the peace in and for said county of Cook, in the State of Illinois, do hereby certify that Joseph Robinson and Ellen Maria Robinson, his wife, personally known to me as the persons whose names are signed to the foregoing deed as having executed the same, appeared before me this day in person and acknowledged that they signed, sealed, and delivered said instrument of writing freely and voluntarily for the uses and purposes therein set forth; and the said Ellen Maria Robinson, wife of said Joseph Robinson, having been by me examined separate and apart from and out of hearing of her said husband and after the contents thereof having been by me made fully known and explained to her, acknowledged that she freely and voluntarily executed the said instrument of writing and relinquished her dower to the lands and tenements therein mentioned without fear or compulsion of her said

husband freely and voluntarily, and that she does not wish to retract the same.

Given under my hand and seal this the 3rd day of August, 1858.

To this was the signature of the justice of the peace, whose name I do not remember. J. P. followed his name and a scroll seal.

This deed was in my possession from 1861 to 1868, and all
90 the descriptions in the various instruments, documents, and court proceedings hereinbefore mentioned I copied myself *verbatim et literatim* from this deed. Some time in the month of October, 1866, I delivered this deed, together with a number of others relating to the title of said two tracts of land in this deed described, to one Henry H. Dyer and I have not seen them since nor do I know where they are. The lands described in this deed are the same which I sold and conveyed as administrator *de bonis non* of the estate of John F. Horton, deceased, to Moses W. Baer, as hereinbefore stated.

Int. 24. Are you familiar with the description of land and the location thereof of the estate of said John F. Horton, deceased, and, if yea, where they are located, and if upon Robinson's reserve, in Cook county, what portion thereof?

A. 24. I am acquainted with the lands belonging to the estate of John F. Horton, deceased, situated in Cook county, Illinois. I know the location thereof; they were parts of Robinson's reserve, in Cook county, and parts of the tract marked on the plat of the subdivision of said reservation hereinbefore mentioned with the name of Joseph Robinson. The two tracts of land are adjoining each other and the largest portion of each of them lies north of the line that divides the north and south sections of the reservation; a smaller portion of each lies south of said line.

Int. 25. State whether said John F. Horton, either in said name or the name of John F. Hortmann, was seized of any other lands at the time of his decease than those mentioned in said inventory.

A. 25. As far as I know, he was not.

91 Int. 26. State whether you, at any time after the sale of said Horton land by you as administrator, became interested in said land as purchaser or otherwise; if yea, from whom did you purchase or obtain such interest, and was any deed executed to you conveying said —.

A. 26. On the 25th day of January, 1864, I purchased the said two tracts of land in Robinson's reserve, in Cook county, of one Charles Kappmeier, and the said Charles Kappmeier and Klara, his wife, conveyed the said property to me by warranty deed. This deed was dated on the 25th of January, 1864, and acknowledged on the same day, and recorded, according to the recorder's certificate endorsed on the back thereof, on the 20th day of July, 1864, in the recorder's office of said Cook county, in Book 290 of Deeds, page 79. The deed was in form precisely like the one from Joseph Robinson and his wife to John F. Horton described in my answer to interrogatory 23rd hereof. The name of the grantors in this deed were Charles Kappmeier and Klara Kappmeier, his wife; the name of the grantee was Leon Strauss; the consideration expressed

in said deed was $1,000.00. The wording of the conveying and *habendum* clause was precisely the same as in the deed to John F. Horton in this answer mentioned, and the description of the property therein described was precisely the same in words and figures as described in the administrator's deed to Moses W. Baer. This deed was signed and sealed by the said Charles Kappmeier and *K*lara Kappmeier in my presence, and also acknowledged by the said parties before a notary public. The certificate of acknowledgement by said notary public to this deed attached was in all respects in the same form and wording as the certificate of acknowledgement attached to the said deed from Robinson to Horton herein mentioned, with the exception of the name of the parties and
92 the name of the notary public. The words of attestation by said notary were given under my hand and notorial seal this 25th day of January, 1864, signed by the notary in my presence, but I do not recollect his name, and he attached his notorial seal in my presence. This deed was in my possession from the time of its delivery to *to* me by said Kappmeier on the 25th of January, 1864, until October, 1866, when I delivered it, with the other deeds and papers herein referred to, to Henry W. Dyer. I have not seen it since and do not know what became of it.

Int. 27. State whether you know one Moritz Gotthelf; and, if yea, when and where you knew him. State also whether you ever had any transaction with him in regard to said Horton land, and, if so, what; whether you sold and conveyed said land to said Gotthelf. State, if you know, where said conveyance now is, if any you made. State also the date, names of grantor and grantee, consideration and description of property conveyed, and generally the contents of said conveyance, according to your best recollection, and whether under seal, whether acknowledged, and whether, where, and when recorded.

A. 27. I knew Moritz Gotthelf in the city of Chicago. He resided here from the year 1858 and lived there still at the time I removed from Chicago in year 1868. He was my wife's brother. About the first of April, 1864, I borrowed some money of him that belonged to his wife, and to secure that loan to him I gave him a warranty deed of the said property referred to in this interrogatory as the Horton lands. This deed was dated April 1, 1864, and acknowledged by me before a notary public on the same day and was recorded on the 2nd day of April, 1864, in the recorder's office, in said Cook county, in Book 280 of Deeds, on page 151; consideration in said
93 deed mentioned is one thousand dollars. The name of the grantor in said deed was Leon Strauss; name of the grantee Moritz Gotthelf. The deed conveyed the two tracts of land in Robinson's reserve by precisely the same description by which said property was described in the deed of Kappmeier to me, hereinbefore mentioned. I signed the said deed with my name and affixed a scroll seal to it. The form of the deed and its wording was precisely as that of said deed of said Kappmeier to me. The certificate of acknowledgement attached thereto by the notary who took the acknowledgement was in the usual form, same as in the Kappmeier

deed, with the proper words of attestation signed in my presence by the said notary, whose name I do not remember, and who attached his notorial seal in my presence. I delivered this deed at the time of the transaction to the said Moritz Gotthelf, but some time later it came into my possession again, and in October, 1866, I delivered it, with the other title papers in my possession relating to the said lands, to Henry H. Dyer and I have not seen it since and don't know where it is.

Int. 28. Do you know who was the grantor of Charles Kappmeier, your grantor in the deed by Kappmeier and wife, heretofore mentioned, to you, and did you ever see the deed by which your grantor claimed title? If yea, state the date, name of grantors and grantees, consideration, property conveyed, and contents generally or fully as you are able, and whether such deed was under seal, acknowledged, and whether and when and where recorded. State whether the person named as grantor of said Charles Kappmeier is the same or some other person than the one who was grantee in the administrator's deed mentioned by you in the former interrogatories.

Ans. 28. Moses W. Baer, an umarried man, was the grantor
94 of Charles Kappmeier. He is the same person named as grantee in the said administrator's deed herein referred to. I drew up the said deed from said Moses W. Baer, who is named as grantor therein, to the said Charles Kappmeier, who is named as grantee therein. This deed was dated October 7, 1863, and acknowledged by said Moses W. Baer in my presence before a notary public, whose name I do not remember. The deed was in form a warranty deed, of the same style and wording as the deed from Charles Kappmeier and wife to me, herein referred to; consideration was $967.50, and the property conveyed by the said deed was therein described by precisely the same description and in the same words and figures as in the administrator's deed to said Moses W. Baer, hereinbefore referred to, and was recorded in recorder's office, in Cook county, Illinois, on the 10th day of July, 1864, in Book 290 of Deeds, on page 78. Moses W. Baer signed the said deed in my presence and affixed his scroll seal thereto, and after it was acknowledged delivered it, in my presence, to Charles Kappmeier. The certificate of acknowledgement by a notary public before whom this deed was acknowledged, and which was appended to this deed, was in the precise form and which was in form and wording as the one attached to the deed of Leon Strauss to Moritz Gotthelf, heretofore mentioned, except the names of acknowledgement, was signed by the notary in my presence, who also -fixed his notarial seal in my presence. The last I saw of that deed was when I gave it to Henry H. Dyer in October, 1866. I do not know where it is now.

Int. 29. State whether, to your knowledge, the above-named Moritz Gotthelf, subsequent to the conveyance by you to him of said Horton lands which you have mentioned, made any deed of conveyance of said real estate, and whether you had any business connection with such transfer; and, if so, what; whether you saw
95 and read and knew the contents of such deed; and, if yea, state the name- of the grantors, grantee, the consideration, de-

scription of the property conveyed, whether such deed was under seal, acknowledged, and recorded, when, and where; whether said deed was delivered, to whom, when, and where, and state generally the contents of such deed.

A. Moritz Gotthelf, at my request and with my full consent, joined by his wife, Barbetta Gotthelf, conveyed the said property in the interrogatory referred — as the Horton land to Joseph Gotthelf. I drew up the deed, which was dated August 8th, 1864, and acknowledged by the said Moritz and Barbetta Gotthelf before a notary public on the same day. This deed was recorded in the recorder's office of Cook county, Illinois, on the 17th of September, 1864, in Book 289 of Deeds, page 42. The consideration in said deed was $1,000.00. It was a warranty deed of precisely the same form and wording as the deed from Charles Kappmeier and his wife to Leon Strauss, previously mentioned, with the exception of the names of the grantors, which were Moritz and Barbetta Gotthelf, his wife, and the name of the grantee, which was Joseph Gotthelf. The deed conveyed the same property by precisely the same description as the deed from Leon Strauss to Moritz Gotthelf. The deed was signed in my presence by said Moritz Gotthelf and Barbetta Gotthelf, with seals attached to their names, and after it was acknowledged delivered by the said grantors to Joseph Gotthelf, in my office, on the day and — the time of the transaction. This deed was acknowledged by said Moritz and Barbetta Gotthelf before a notary public of Cook county, whose name I do not recollect, who in my presence signed the certificate of acknowledgement to this deed attached
96 and affixed his notarial seal thereto. The form of this certificate of acknowledgement was the same as the one attached to the deed of Joseph Robinson and his wife to John F. Horton, hereinbefore mentioned. The last I saw of that deed was when I delivered it, with the other title papers, to Henry H. Dyer in October, 1866, and have not seen it since and do not know where it is now.

Int. 30. State what knowledge you have, if any, of any subsequent conveyance of said land by Joseph Gotthelf, and whether you saw any deed relating to said transfer; if yea, when and where you last saw said — and where is said deed now; and, if yea, state the names of the grantors, grantee, and the consideration in said deed, and give a description of the property thereby conveyed, and state generally the contents of such deed; also whether said deed was under seal, acknowledged, and recorded, and when, and where, and also when and where — to whom the same was delivered, if you know.

A. 30. Joseph Gotthelf and Rachel Gotthelf, his wife, executed a deed of the lands in Robinson'- reservation, in Cook county, Illinois, conveyed to the said Joseph Gotthelf by Moritz Gotthelf and his wife, as hereinbefore stated, to Henry H. Dyer, by deed dated October 6th, 1866, recorded November 17th, 1866, in the recorder's deed office of Cook county, Illinois, in Book 364 of Deeds, on page 542. The grantors in said deed were the said Joseph Gotthelf and Rachel Gotthelf, his wife. The grantee in said deed named was the said Henry H. Dyer. The consideration mentioned in said deed was $1,000.00. The deed

conveyed the said two tracts in Robinson's reservation by the following description: All those certain tracts, parts, pieces, or portions of land situated in Cook county, Illinois, in Robinson's reservation, so called, in township 40 north, range 12 east, of the third
97 principal meridian: Commencing 19 chains and 59 links west of the southeast corner of the north section of said reservation and 2 chains 67 links south of the south line of said section, running thence west 10 chains and 72 links, thence north 18 chains 67 links, thence east 10 chains and 72 links, and thence south 18 chains and 67 links to the place of beginning, containing by estimate 20 acres; also commencing at a point in the south line of said north section 8 chains 23 links west of the southeast corner thereof, running thence north 14 chains 95 links, thence west 11 chains 36 links, thence south 17 chains 61 links, thence east 11 chains 36 links, and thence north 2 chains 67 links to the place of beginning, containing by estimation 20 acres, more or less. All the land above described contains 40 acres, more or less, situate in the town of Leyden, Cook county, Illinois. The lands so described and the metes and bounds thereof are the same as those described in the deed from Joseph Robinson and wife to John F. Horton, heretofore mentioned, as traced by me on the recorded map of said subdivision of Robinson's reservation heretofore mentioned. I drew this deed for said parties in my office, at Chicago. It was a warranty deed of precisely the same form and wording of the conveying and *habendum* clauses as the deed from Moritz Gotthelf and wife to said Joseph Gotthelf. The sketch of the description of the land in this deed conveyed, intending precisely to cover the metes and bounds of the lands conveyed in the deed from Joseph Robinson to John F. Horton, was furnished to me by a surveyor whose name was Charles Herrenkind, after he had traced the lines of said land for me, as heretofore testified by me. This deed was signed in my presence by both the said Joseph and Rachel Gotthelf, with seals affixed to their names, and, after the acknowledgement thereof in my presence, delivered by them to the said Henry H. Dyer, upon the day of their execution,
98 in my office, in Chicago. The said Joseph and Rachel Gotthelf made acknowledgement of said deed in my presence before a notary public of Cook county, Illinois, in the same building as my office, whose name I do not recollect. His certificate of this acknowledgement to this deed attached was in form and substance the same as that attached to the deed of Joseph Robinson and his wife to John F. Horton, except the names of the acknowledging parties. The certificate was signed by the said notary in my presence and in my presence also he attached his notarial seal thereto. I have seen said deed some time in the month of November, 1866, when the said Henry H. Dyer brought it to my office for the purpose of having the minutes thereof taken, to be embodied in an abstract of title which I was then preparing for the said Dyer. After taking the minutes of said deed I handed the same back to the said Dyer. I have not seen it since nor do I know where it is.

Int. 31. Did you and your wife ever execute and deliver to said Henry H. Dyer any paper-writing concerning said land; if yea,

when and where did you last see said paper-writing and where is it now, and state any and what information you have as to where it is now.

A. 31. On the 6th day of October, 1866, I, jointly with my wife, executed and delivered a quitclaim deed to said lands, — having been conveyed, as aforestated, by Joseph Gotthelf and Rachel, his wife, to said Henry H. Dyer. The last time I saw said deed it was in the possession of said Henry H. Dyer, on or about 26th day of November, 1866. I have not seen it since and don't *don't* — where it is.

Int. 32. State, if you remember, the contents or the substance of the contents of said deed, giving the date thereof, names of the grantor and grantee, the consideration, and the description
99 of the property thereby conveyed, and state whether the same was under seal and acknowledged, when and where recorded, if recorded; when and where and to whom was the same delivered.

A. 32. The said deed was in substance in the following words and figures: "This indenture, made this 6th day of October, 1866, by Leon Strauss and Helena Strauss, his wife, of the city of Chicago, in the county of Cook, State of Illinois, parties of the first part, and Henry H. Dyer, of the same place, party of the second part, witnesseth: That the said parties of the first part, for and in consideration of the sum of $1.00, to them in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, have remised, released, sold, conveyed, and quitclaimed, and by these presents do remise, release, sell, convey, and quitclaim, unto the said party of the second part, his heirs and assigns, all their right, title, and interest in and to that part of Robinson's reserve in township 40 north, range 12 east, of the 3rd principal meridian, in Cook county, Illinois, heretofore deeded by the said Leon Strauss to Moritz Gotthelf by deed dated April 1, 1864, recorded in the recorder's office, in Cook county, Illinois, in Book 280 of Deeds, on page 151. The object and purpose of these presents is to relinquish the dower right of the said Helena Strauss in and to the premises above mentioned. In witness whereof the said parties of the first part have hereunto set their hands and seals on the day and year first above written. I signed my name Leon Strauss, and my wife signed her name Helena Strauss, to said deed, with seals to our respective names. Both myself and my wife made acknowledgement of its execution on the day of the date thereof, before a notary public, having his office in the same building with mine, but
100 I do not recollect his name now, and immediately after the acknowledgement thereof delivered the said deed to the said Dyer in my office. The certificate of this acknowledgement attached to this deed was in the same form and wording and substance, except the names of the acknowledging parties, as the one appended to the deed from Joseph Robinson and his wife to John F. Horton, heretofore mentioned. The deed was recorded in the recorder's office, in Cook county, Illinois, on the 17th day of November, 1866, in Book 366, page 611. The last time I saw that deed was on or about the 25th day of November, 1866, after I had taken the

minutes thereof for the purpose of *the purpose of* embodying the same in the abstract of title I was making for said Dyer, hereinbefore mentioned, when I handed said deed to said Dyer. I have not seen it since, nor do I know where it is.

Int. 33. State what business relations you may have had with the parties connected with said Horton lands concerning whom you have testified and which you have not already stated and which have aided your memory or which have been the occasion of your obtaining knowledge in reference to the description and conveyances of said Horton land.

A. 33. During the time I was engaged in the city of Chicago in the business of real-estate agent, examiner of titles, loan broker, and conveyancer I had many acquaintances and friends in the city of Chicago, especially among the Germans, who consulted me on many occasions and employed me to make searches of records and to draw up legal papers for them in matters relating to real estate. I frequently also made abstract- of title of land in Cook county, Illinois, for these and other parties. The Moses W. Baer, Charles Kappmeier, Moritz Gotthelf, and Joseph Gotthelf mentioned in these answers were all friends of mine, who in all such matters employed me to attend to their business in that line, and thus it was
101 that I drew up all the papers mentioned in these answers, both in the court proceedings and the various deeds hereinbefore mentioned, except the deed from Robinson and wife to Horton. I also filled out all the certificates of acknowledgements and had all the deeds recorded and returned to my box in the recorder's office.

Int. 34. Have you had any paper-writing or memoranda from which you refreshed your recollection concerning the matters about which you have testified? If yea, state who make said memoranda, when it was made, the manner in which it was prepared, in whose handwriting is it, and your knowledge of its correctness. Please attach the original memorandum from which you have refreshed your recollection. State whether or not, after refreshing your recollection from said memorandum, you can say you have an independent recollection of the facts you have testified to, regardless of said memorandum.

A. 34. I have a memoranda now in my possession from which I have refreshed my memory in the course of this examination. I took this memorandum myself from the original deeds and from the original records in the recorder's office and in the office of the clerk of the county court of Cook county, Illinois, mentioned in this examination. This memorandum consist- of minutes which I took from said various instruments and records during the months of October and November, 1866, for the purpose of preparing from the said minutes a partial abstract of the title of the two tracts of land in Robinson's reserve, Cook county, Illinois, for and at the request of Henry H. Dyer, said partial abstract showing chain of title from Joseph Robinson down to said Dyer. The memorandum I used during the course of this inquiry are the identical min-
102 utes so taken by me at that time.

(Said memorandum is here delivered by the witness to the commissioner, and is hereto attached, marked Exhibit A, and made a part of *these* deposition.)

It is in my own handwriting and I have had it in my possession ever since the said time, kept among my other papers. I know that it is correct. I have a full and independent recollection of all the facts I have testified to, after refreshing my memory from said memorandum, independent and regardless of the same.

Int. 35. State any fact going to show your accuracy of recollection of the wording of the deeds.

A. 35. I know that I perfectly remember the wording of the various deeds to which I have testified from the facts that the deed from Joseph Robinson and wife to John F. Horton was a printed form filled up, which was published or printed by the printing office of the Chicago Democrat, a newspaper then published in Chicago, owned by John Wentworth. All the subsequent deeds herein testified to by me were printed blanks, filled up by myself in my office. These blanks were printed by Culver, Page & Hoyne, a printing and stationery house in said city of Chicago. I used the said blanks in my office, in the course of my business, for many years, exclusive of all others, and know their wording, including the certificate of acknowledgement, by heart. I also know that said blank of the said Robinson's deed, which came from the Democrat office, was in its wording precisely the same as those that came from Culver, Page & Hoyne.

Int. X 1. When you left Chicago where did you go and how long did you stay?

A. X 1. To New York, and stayed until 1869.

Int. X 2. When you left New York where did you go and
103 how long did you stay?

A. X 2. To Charleston, South Carolina, and stayed until June, 1871.

Int. X 3. When you left Charleston, S. C., where did you go and how long did you stay?

A. X 3. To Cincinnati, Ohio, and stayed until 18th of October, 1871.

Int. X 4. When you left Cincinnati where did you go and how long did you stay?

A. X 4. To St. Louis, Mo., and stayed until January 1st, 1875. I then went to Pine Bluff, Ark., and stayed until January 1, '78. I then went to Calvert, Texas, and stayed until April 6th, 1881. I then went on a general traveling tour in Ohio, Indiana, and Illinois, and on the 25th of August, 1881, I came to Eufaula, Alabama, where I am still residing.

Int. X 5. How long have you followed the profession of a minister?

A. X 5. Since September 1st, 1881, in the Jewish Church of Eufaula. I have been a teacher for the last six years.

Int. X 6. What other business have you followed since you left Chicago?

A. X 6. I was engaged in St. Louis as a cashier and book-keeper in the store of one A. Hirsch, dry-goods merchant, until I went to Pine Bluff, where I was engaged in carrying on a small grocery store. During my stay at Calvert, Texas, I kept a private school.

Int. X 7. How many communications did you receive from Chicago in reference to this case, and from whom?

A. X 7. I received five communications from plaintiff's attorneys.

Int. X 8. Did they not state to you fully what they expected to prove by you in this case?

(Objected to by plaintiff's attorney for the reason that the
104 testimony sought is the contents of letters which have not been showed to be lost and because it is secondary.)

A. X 8. They did not.

Int. X 9. Have you those letters with you?

A. X 9. I have not them with me. I may be able to find them.

Rebutting Interrogatories.

Int. 1. What was the character of the communications you received from the pl'ff's attorneys in respect to your testimony in this case?

(It is agreed by plaintiff's attorneys that defendants may at any time interpose objection to this interrogatory and the answer thereto by giving one day's notice to plaintiff's attorney of the grounds of said objection.)

Rebut. A. 1. The first letter was an inquiry if I had any knowledge and recollection of John F. Horton and the property herein testified about and of deeds and other papers referring thereto. The 2nd letter was an inquiry if I would be willing to be a witness. Then I had three telegrams, one asking me to give name of some attorney to act as commissioner, another asking me if I would be willing to come to Chicago to testify, the other requesting me to name an attorney in Eufaula to represent them in this examination.

LEON STRAUSS.

I, A. H. Merrill, of the county of Barbour and State of Alabama, a commissioner duly appointed to take the deposition of Leon Strauss, a witness whose name is subscribed to the foregoing deposition, do hereby certify that previous to the commencement of the examination of the said Leon Strauss as a witness in this suit be-
tween the said Aquila A. Pickering, plaintiff, and the said
105 John A. Lomax and William Kolze, defendants, — so far as he should be interrogated concerning the same; that the said deposition was taken at my office, in the city of Eufaula, in the county of Barbour and State of Alabama, on the 5th day of May, A. D. 1884, and that after said deposition was taken down by me as aforesaid the interrogatories and answers thereto as written down were read over to the witness, and thereupon the same was signed and sworn to by the said deponent, Leon Strauss, before me, the

oath being administered by me as such commissioner, at the place and on the day and year last aforesaid.

A. H. MERRILL, [SEAL.]
Commissioner.

I, A. H. Merrill, commissioner as aforesaid, hereby certify that I am entitled to the sum of fifty ($50.00) dollars for taking *these* deposition, and the witness, Leon Strauss, is entitled to twenty-five dollars for attending as a witness.

A. H. MERRILL,
Commissioner.

EXHIBIT A.

Joseph Robinson — Maria, His Wife, Signed and Ack. Ellen Maria, to John F. Horton.

W. D., Aug. 3d, 1858.
July 15, 1861, 217, p. 300.
$4,100.00.
Conveys all the following-described pieces of land, viz:
Commencing 19.59 chains W. of the S. E. cor. of the N. sec. of Robinson's reservation and 2.67 chains S. of the S. line of said sec., thence W. 10.72 chains to a post witness tree, a white elm 30 inches in diameter, bears W. 28 links; thence N. 18.67 chains to a
106 post, thence E. 10.72 chains to a post witness described in second deed, thence S. 18.67 chains to the place of beginning, containing 20 acres; also the following, to wit: Commencing at the S. E. cor. of the N. sec. of Robinson's reservation, thence S. 66° W. 6.51 chains to a post; thence W. 13.65 chains to a post, a burr oak 6 inches in diameter, bears S. 36° W. 36 links; thence N. 17.61 chains to a post, a white oak 6 inches in diameter, bears N. 83½° W. 15 links, a black oak 18 inches in diameter bears S. 9° E. 64 links; thence E. 11.36 chains to a burr oak 24 inches in diameter, thence S. 14.95 chains to a post, thence E. 8.23 chains to the place of beginning, containing 21 1/10 acres.
Ack. before J. P., Cook Co., Ill.

In the County Court of Cook Co., Ill.

Probate of Estate of JOHN F. HORTON.

Pet. for letters of ad. filed Aug. 2, 1861, represents that John F. Horton died at Chicago on or about Aug. 1, 1861, intestate, leaving him surviving no widow, children, or relatives in this State, and that petitioner is a cred'r.

Letters of administration granted to Benjamin H. Skinner issued, dated Aug. 2. 1861. Bond for $3,000.00 filed same day.

Petition for removal of Benjamin H. Skinner, adm'r, &c., and for letters of adm. by William B. Hortmann, filed Sep. 18, 1861, alleges death of John F. Horton on or about July 30, 1861, leaving no

widow or children surviving him; that petitioner is the eldest brother of dec'd; that said Skinner on Aug. 2, 1861, procured letters of adm'n before such letters could lawfully issue; prays that said Skinner be removed, and that said letters of adm'n be revoked.

Ordered Sep. 18, 1861, vol. 2, p. 437, that citation be issued
107 to Benjamin H. Skinner to appear and show cause why administration should not be granted to William B. Hortmann, returnable Sep. 19 inst., at 10 a. m. Citation issued, dated Sep. 18, 1861; returned Sep. 19, 1861; served on B. H. Skinner. Order, Sep. 27, 1861, vol. 2, p. 459: It appearing that administration of the estate of John F. Horton, dec'd, heretofore granted to Benjamin H. Skinner, was erroneously granted, orders that the said letters of adm'n be revoked, and that the citation be dismissed.

Petition for letters of administration *de bonis non*, filed Oct. 2, 1861, by Leon Strauss as creditor, represents that John F. Horton died at Chicago, on or about Aug. 1, 1861, intestate; that letters — administration of the est. of s'd dec'd has been granted to Benjamin H. Skinner, which have been revoked; that said dec'd left him surviving no widow, but his father, John Hortmann, and his brothers, William B. Hortmann and Abraham B. Hortmann, and Mary Elizabeth, wife of Isaac Ritter, and Sarah Ann, wife of John Bennett, as his sisters.

Letters of adm'n *de bonis non* granted to Leon Strauss Oct. 2, 1861, bond for $3,000, filed same day.

Notice, dated Nov. 28, 1861, to present claims for adjudication on the 3rd Monday of January (1862) next.

Attached is certificate of the publisher of the "Chicago Post," a newspaper published in the city of Chicago, that above notice was published in s'd newspaper for 6 successive weeks, to wit, 36 times; date of 1st paper containing same was Nov. 30, 1861, and the last, Jan'y 18, 1862; also affidavit by Leon Strauss that on Nov. 28, 1861, he posted copies of above notice in 6 of the most public places (designated) in Cook Co., Ill.

Inventory, filed Dec. 6, 1861, contains a list of personal property,
and also a piece of land in Cook Co., Ill., commencing 19.59
108 chains W. of the S. E. cor. of the north sect. of Robertson's reservation and 2.67 chains S. of the south line of said sec., thence W. 10.72 chains to a post witness tree, a white elm 20 inches in diameter, bears W. 28 links, thence N. 18.67 chains to a post, thence E. 10.72 chains to a post witness described in second deed, thence S. 18.67 chains to the place of beginning, containing 20 acres; also the following, to wit: Commencing at the S. E. corner of the N. sec. of Robinson's reservation, thence S. 66° W. 6.51 chains to a post; thence W. 13.65 chains to a post, a burr oak 6 inches in diameter, bears S. 36° W. 36 links; thence N. 17.61 chains to a post, a white oak 6 inches in diameter, bears N. 83½ W. 15 links, a black oak 18 inches in diameter bears S. 9° E. 64 links; thence E. 11.36 chains to a burr oak 24 inches in diameter; thence S. 14.95 chains to a post; thence E. 8.23 chains to the place of beginning, containing 21.1 acres; also an 80-acre tract in Winnebago Co., Ill.

Ordered, Oct. 2, 1861, vol. Q, p. 477, appointing James Smith and James Dalton appraisers.

Appraisers' bill of appraisement filed Dec. 16, 1861; personal property valued at $323.16.

Sale bill, filed Dec. 26, 1861, shows amount realized from the sale of the personal property, $735.73.

Adm'r's acc't filed and approved Feb'y 27, 1863, shows amount in his hands, $239.19.

Adm'r's acc't filed March 26, 1863, shows that the amount of claims allowed is $8,165.40; deficiency, $7,934.21.

In the County Court of Cook County, Illinois.

109	LEON STRAUSS, Adm'r *de bonis non* of the Estate of John F. Horton, Dec'd, *vs.* JOHN HORTMANN, WILLIAM B. HORTMANN, ABR. B. Hortmann, Mary E. Ritter, and Isaac Ritter, Her Husband; Sarah A. Bennett and John Bennett, Her Husband, and Unknown Parties.	Petition to Sell Real Estate.

Petition, filed March 31, 1863, alleges that John F. Horton, alias John F. Hortmann, died on or about August 1, intestate and unmarried and leaving surviving him John Hortmann, his father; William B. Hortmann, his brother; Mary E. Ritter, wife of Isaac Ritter, and Sarah Ann Bennett, wife of John Bennett, his sisters; that there was another brother, A. B. Hortmann, who was not heard from for 8 years, and that it is unknown whether he is dead or alive; if dead, whether he left him surviving a wife and issue; and that the persons named and the persons referred to as unknown are the only heirs of John F. Horton, dec'd.

That on Oct. 2, 1861, letters of adm'n *de bonis non* upon said estate were issued from the Co. court of s'd Cook Co. to petitioner; that an inventory and bill of appraisement has been filed in said court, and a true account, showing balance on hand of moneys received from sale, personal estate, amounting to $231.19, and the claims by said court allowed amount to $8,165.40, and that there is therefore a deficiency of 7,934.21 besides interest, costs, and charges of administration, and that the personal estate is insufficient to pay said claims.

That said deceased died seized of the following real estate (follows the same description of all the real estate as in the inventory). Prays for order of sale of said real estate.

Summons issued, dated March 30, 1863, to all of s'd def'ts,
110 returnable 3d Monday of May next.

Returned: "The within-named defendants not found in my county after diligent search. This 18th day of May, 1863."

Affidavit filed March 30, 1863, of the non-residence of said def'ts, John Hortmann, William B. Hortmann, Mary E. Ritter and Isaac Ritter, her husband; Sarah A. Bennett and John Bennett, her husband; A. B. Hortmann, and unknown parties.

Notice to all defendants to appear on the 3rd Monday of May, 1863.

Attached is a certificate of the publishers of "The Evening Post," a newspaper published in the city of Chicago, that above notice was published for 4 successive weeks, to wit, 24 times, in said paper, the 1st paper containing same dated March 31, 1863, and the last paper May 1, 1863.

Order July 23, 1863, vol. S, p. 488.

Petition taken as confessed as to def'ts John Hortmann, William B. Hortmann, A. B. Hortmann, Mary E. Ritter and Isaac Ritter, Sarah A. Bennett and John Bennett by default.

It appearing to the court that the material allegations in said petition are true, orders and decrees that said adm'r, in conformity with the statute, &c., proceed to make sale of all the estate, right, title, and interest which was of said John F. Horton at the time of his decease in and to the lands in said petition and above described; that said adm'r sell said pieces of land separately and in the order in said petition mentioned, for cash, and not on credit, and that s'd adm'r, before executing any deed, report his proceedings to the court for approval and confirmation.

Report of sale, filed Oct. 6, 1863, reports that, in pursuance of said decree, said adm'r *de bonis non* did cause the following notice to be posted and published, viz: Notice, dated July 24, 1863, that said adm'r *de bonis non* will on the 7th day of Sept., 1863, at 10 a. m., at the north door of the court-house, in the city of Chicago, Cook Co., Ill., sell at public auction to the highest bidder, for cash, all the estate, right, title, and interest which was of the said John F. Horton at the time of his decease in and to the premises (follows the same description as in inventory, petition, and decree).

111

Attached is affidavit of Theodore Jancovins that on July 25, 1863, he posted up copies of above notice in 6 of the most public places in said Cook Co. (designated).

Also certificate of the publishers of the "Chicago Post," a newspaper published in the city of Chicago, Ill., that the above notice was published for 6 successive weeks, to wit, 36 times, in said newspaper. The *the* 1st paper containing same was dated July 25, 1863, and the last Sept. 7, 1863.

That, in pursuance of said notice, on Sept. 7, 1863, at 10 a. m., at the north door of the court-house in the city of Chicago, Ill., he sold to Moses W. Baer the 20-acre piece first above described for $7.75 per acre, amounting to $155.00; that he also sold to the same person said $21\frac{1}{10}$ acres, second above described, for $7.75 per acre, amounting to $163.53.

Order Oct. 6, 1863, vol. T., p. 39, that the sale of the first two pieces in said report mentioned, amounting to $318.53, be confirmed and that the said adm'r execute the proper conveyances of the premises sold as aforesaid.

Leon Straus, adm'r *de bonis non* of the estate of John F. Horton, dec'd,
to
Moses W. Baer.

Adm'r's deed dated Oct. 6, 1863, and rec. Oct. 6, 1863, Book 266, p. 12.

Consid., $318.53.

112 Sets forth decree and notice of sale in full; recited that in pursuance of said decree and notice said adm'r did, on Sep. 7, 1863, at 10 a. m., at the north door of the court-house, in the city of Chicago, Ill., — all the right, title, and interest which was of the said John F. Horton at the time of his decree in and to the premises hereinafter described to said party of second part for $7.75 per acre; conveys same premises described precisely as in the deed from Robinson to John F. Horton, with the addition of —, situate in T. 40 N., R. 12 E., of 3rd P. M.

Moses W. Baer (unmarried)
to
Charles Kappmeier.

W. D., Oct. 17, 1863; rec. July 10, 1864, in Book 290, p. 78.
$967.50.
Conveys same premises and by the same description as last.

Charles Kappmeier & Clara, his wife,
to
Leon Straus.

W. D. dated Jan'y 25, 1864; recorded July 20, 1864, in Book 290, p. 79.
Consid., $1,000.00.
Conveys same property and by same description as the last.
Acknowl. before not. pub., Chic., Ill.

Leon Straus
to
Moritz Gotthelf.

W. D. dated Apr. 1, 1864; recorded Apr. 2, 1864, in Book 280, p. 151.
Consid., $1,000.00.
Conveys same premises by same description.
Ackn. bef. not. pub.

Moritz Gotthelf & Babetta, his wife,
113 to
Joseph Gotthelf.

W. D. dated Aug. 8, 1864; recorded Sept. 17, 1864, in Book 289, p. 42.
Con., $1,000.00.

Conveys same premises by the same description.
Ack. before not. pub.

Joseph Gotthelf & Rachel, his wife,
to
Henry H. Dyer.

W. D. dated Oct. 6, 1866; recorded November 17, 1866, in Book 364, p. 542.
Consid., $1,000.00.
Conveys those certain parts or portions of Robinson's reservation, so called, in T. 40 N., R. 12 E., of 3rd P. M., commencing 19 chains and 59 links W. of the S. E. cor. of the N. sec. of said reservation and 2 chains and 67 links S. of the S. line of said sec., running thence W. 10 chains and 72 links; thence N. 18 chains and 67 links; thence E. 10 chains and 72 links, and thence S. 18 chains and 67 links to the place of beginning, containing, by estimation, 20 acres; also commencing at a point in the south line of said N. sect. 8 chains and 23 links W. of the S. E. cor. thereof, running thence N. 14 chains and 95 links; thence W. 11 chains and 36 links; thence S. 17 chains and 61 links; thence E. 11 chains and 36 links, and thence N. 2 chains and 67 links to beginning, containing, by estimation, 20 acres. All the land above described contains 40 acres, more or less, situated in the town of Leyden, Cook Co., Ill.
Ack. before not. pub.

Leon Straus & Helena, his wife,
to
Henry H. Dyer.

Deed dated Oct. 6, 1866; recorded November 17, 1866, in Book 366, p. 611.
Consid., $1.00.
Remises, releases, sell-, convey-, and quitclaim- all right, title, and interest in and to that part of Robinson's reservation in T.
114 40 N., R. 12 E., of 3 P. M., in Cook Co., Ill., heretofore deeded by Leon Straus to Moritz Gotthelf by deed dated Apr. 1, 1864, recorded —, Book 280, p. 151. The object and purpose of these — to relinquish the dower right of s'd Helena Straus, — mentioned.

OWEN COONEY, recalled, testified:

Direct examination by Mr. DECKER:

Q. What is the name of the river that runs through that Robinson's reserve?
A. The proper name and the name that is given on the map is Aux Plaines.

Mr. HERVEY: We make no claim on the identity of the river.

Court adjourned to meet at 10 o'clock a. m. the next day.
Court met, pursuant to adjournment, at 10 o'clock a. m. July 21, A. D. 1885.

Mr. DECKER: We next offer in evidence a certified copy of the county collector's published delinquent list of general taxes of 1874 and the judgment record for said year's taxes — the final order of judgment for sale in the county court of Cook county; also copy of receipt and record of sale for the taxes of 1874 in relation to the premises in question.

Marked "Exhibit D."

(Objected to by counsel for defendant as not the best evidence. Objection overruled; to the overruling of which objection counsel for defendant then and there excepted.

It is as follows:

115 *Cook County Delinquent Tax List.*

Office of the county treasurer and *ex officio* county collector, Cook county, Illinois.

CHICAGO, *May* 21, 1875.

The following list, the caption of which is "list number one," is a list of delinquent lands and lots in the county of Cook and State of Illinois upon which remain due and unpaid the taxes and assessments levied and assessed for the year 1874 and upon which remain due and unpaid the amounts for which such property was forfeited to the State of Illinois for unpaid taxes at the tax sale for the taxes of 1873, together with interest at ten per cent. and cost thereon, and upon which remains due and unpaid back taxes of 1873 added (embracing only the delinquent taxes and special assessments, together with the interest and cost thereon, if any, contained and set forth in the collector's books, with the warrants
116 attached thereto, issued by the county clerk of Cook county, State of Illinois, for the year 1874, which now remains due and unpaid), together with the names of the owners thereof, so far as known, and the total amount due and unpaid on each tract and lot.

Explanatory.

In the following list the amounts set down to the right of the figures 1873, in the column headed "year," are the amounts for which such property was forfeited to the State at the tax sale for taxes of 1873, together with ten per cent. interest and cost due thereon and back taxes of 1873 due thereon, if any. The amount set down to the right of the figures 1874, in the column headed "year," are the amounts of taxes due and unpaid for the year 1874.

The figures in the column headed "total tax" represent the total amount of taxes due thereon, respectively.

Leyden.

North section of Robinson's reserve.

Name and description.	No. acres.	S. lot.	Lot.	Year.	Am't. Dolls., cts.	Total tax. Dolls., cts.
Horton, E., 12.64 acres in S. E. cor.	40	1	1	1874		16.27
T. Harshal, 12.64 acres in S. E. cor.	12.64	1	1	1874	5.12	
J. Harshall, 12.64 acres in S. E. cor.	12.64	1	1	1873	5.61	10.73

Public notice is hereby given that the undersigned, county treasurer and *ex officio* county collector of Cook county, State of Illinois, will apply to the county court of said county, at the June term thereof, to commence on the second Monday in June, A. D. 1875, being the fourteenth (14th) day of June, A. D. 1875, for judgment against the delinquent lands, lots, and real estate described in the foregoing list, the caption of which is "list number one," for the taxes and assessments for the year A. D. 1874 and cost due thereon, and for the amount for which such property was forfeited to the State of Illinois for unpaid taxes and assessments, if any, at the tax sale for State and county taxes of 1873, together with interest at ten per cent. and costs due thereon, and for back taxes for the year 1873 added and costs due thereon, and for an order to sell said lands, lots, and real estate for the satisfaction thereof, and also that on the seventh Monday next succeeding the second Monday
117 in June, A. D. 1875, being the second (2d) day of August, A. D. 1875, at the hour of ten (10) o'clock a. m., all the lands, lots, and real estate described in said "list number one," against which judgment shall be rendered and for the sale of which an order shall be made, will be exposed to public sale at the building where the county court is held in said county, to wit, the county building, situate on the northwest corner of Dearbon and Madison streets, in the city of Chicago, in said county of Cook, for the amount of taxes, assessments, interest, and costs due thereon.

Dated Chicago, May 21, 1875.

HENRY B. MILLER,
County Treasurer and ex Officio County Collector of Cook County, Illinois.

STATE OF ILLINOIS, } *ss:*
County of Cook, }

Pleas before the Honorable Martin R. M. Wallace, judge of the county court of Cook county, in the State of Illinois, at a term of said court begun and held at the court-house, in Chicago, in said county, on the second Monday, being the fourteenth day, of June, in the year of our Lord one thousand eight hundred and seventy-five, and the Independence of the United States of America the ninety-ninth.

118 Court opened by proclamation.

Present thereat: Honorable Martin R. M. Wallace, judge of the county court of Cook county; Francis Agnew, sheriff of Cook county.

Attest: HERMAN LIEB,
Clerk of the County Court of Cook County.

In the Matter of the Application of HENRY B. MILLER, County Treasurer and *ex Officio* Collector of the Revenue of Cook County, for judgment for the delinquent State, county, town, school, road, and park taxes and assessment- levied and assessed upon the lands and lots in the county of Cook and State of Illinois for the year 1874, and for judgments for the amounts for which lands and lots were forfeited to the State of Illinois for unpaid taxes at the tax sale for taxes of 1873 and back taxes of 1873 added, together with interest and costs due and unpaid thereon. } Rule to File Objections.

And now, on this day, comes into court Henry B. Miller, county treasurer and *ex officio* collector of the revenue of Cook county, by Charles H. Reed, Esquire, State attorney, on behalf of the people of the State of Illinois, and also by John M. Roundtree, Esquire, county attorney of Cook county, and applies to the court for judgment for the delinquent State, county, town, school, road, and park taxes and assessments levied and assessed upon the lands and lots in the county of Cook and State of Illinois for the year 1874, and for judgments for the amounts for which lands and lots were forfeited to the State of Illinois for unpaid taxes at the tax sale for taxes of 1873 and back taxes of 1873 added, together with interest and costs due and unpaid thereon, the delinquent list of all said aforesaid delinquent taxes and assessments, together with the amounts of said several taxes, assessments, interest, and costs remaining due and unpaid, being contained in thirty-six volumes, numbered from one to thirty-six, inclusive, and hereinafter following.

And it appearing to the court and the court finding from evidence presented that due notice, as required by law, has been given of said application for judgment, it is ordered by the court that any and all persons desiring to object to the rendition of such judgment file their objections thereto in writing by 10 o'clock a. m. on Monday, the 21st day of June instant.

(Here follows table marked pp. 119 & 120.)

121 STATE OF ILLINOIS } *ss:*
County of Cook, }

I, Henry B. Miller, collector of the county of Cook, do solemnly swear that the foregoing is a true and correct record of the delin-

quent lands and lots within the county of Cook upon which I have been unable to collect the taxes and special assessments, interest, and printer's fees charged thereon, as required by law, for the year or the years therein set forth; that said taxes, assessments, interest, and printer's fees now remain due and unpaid, as I verily believe.

HENRY B. MILLER,
County Treasurer and ex Officio County Collector of Cook County, Illinois.

Subscribed and sworn to before me this 14th day of June, A. D. 1875.

[SEAL.] HERMANN LIEB,
County Clerk.

STATE OF ILLINOIS, } ss:
County of Cook, }

County Court of Cook County, June Term, A. D. 1875.

WEDNESDAY, *July 14th, A. D.* 1875—10 o'clock a. m.

Court being in session.

Present: Honorable Martin R. M. Wallace, judge of the county court of Cook county; Francis Agnew, sheriff of Cook county.

Attest: HERMANN LIEB,
Clerk of the County Court of Cook County.

In the Matter of the Application of HENRY B. MILLER, County Treasurer and *ex Officio* Collector of the Revenue of Cook County, for judgment for the delinquent State, county, town, school, road, and park taxes and assessments levied and assessed upon the lands and lots in the county of Cook, in the State of Illinois, for the year 1874, and for judgment for the amounts for which lands and lots were forfeited to the State of Illinois for unpaid taxes at the tax sales for taxes of 1873, and back taxes of 1873 added, together with interest and costs due and unpaid thereon.

And now, on this fourteenth day of July, A. D. 1875, the same being one of the days of the June term, A. D. 1875, of this
122 court, again comes Henry B. Miller, county treasurer and *ex officio* collector of the revenue of Cook county, by John M. Rountree, Esquire, county attorney of said county; also comes the several parties owners of and interested in the several lands and lots in the foregoing list described, who have heretofore severally filed objections to the rendition of judgment against the said lands and lots in which they are interested respectively; and the court having considered the several objections aforesaid, and having heard the evidence adduced and the arguments of counsel, and having duly considered the same and being now fully advised in the premises, it is considered and ordered by the court that all objections to the rendition of judgment against the several lands and lots in the foregoing list described, opposite the description of which, in said list,

the words "judgment refused" are written, there being nothing written after said words to limit or confine the same to any particular tax or assessment or forfeiture, be, and the same are hereby, sustained, and judgment is hereby refused as to said several lands and lots.

It is further considered and ordered by the court that wherever in said list there is noted opposite the description of any land or lot "judgment refused" for any particular tax or assessment or forfeiture or cost judgment is hereby refused against said land or lot for said tax or assessment or forfeiture or costs as to which judgment is noted refused as aforesaid; and it is further ordered that all other objections filed herein to the rendition of judgment against the lands and lots in the foregoing list described be, and the same are hereby, overruled. And whereas due notice has been given of the intended application for judgment against said lands and lots and no sufficient defense having been made or cause shown why judgment should not be entered against said lands and lots for the taxes, assessments, forfeitures, back taxes, interest, and costs due and unpaid thereon for the years herein set forth, except when judgment has been refused as aforesaid: Therefore it is considered and ordered by the court that judgment be, and is hereby, entered against the aforesaid tracts or lots of land, as the case may be, in favor of the people of the State of Illinois, for the sum annexed to the description of each, less any particular tax or assessment, forfeiture, back taxes, interest, or cost for which judgment has been refused as aforesaid, being the amount of taxes, assessments, forfeitures, back taxes, interest, and cost due and unpaid severally thereon; and it is ordered by the court that the said several tracts or lots of land or so much of each of them as shall be necessary to satisfy the amount of taxes, assessments, forfeitures, back taxes, interest and costs due and unpaid severally thereon be sold as the law directs; and it is further ordered that all parties desiring to appeal from said judgment file their appeal bonds in double the amount of the judgment appealed from within twenty days from the date hereof.

M. R. M. WALLACE,
Co. Judge.

(Here follows table marked pp. 123 & 124.)

125 STATE OF ILLINOIS, } ss:
County of Cook, }

County Court of Cook County, June Term, A. D. 1875.

SATURDAY, *the* 17*th Day of July, A. D.* 1875—10 o'clock a. m.

Court being in session.

Present: Honorable Martin R. M. Wallace, judge of the county court of Cook county; Francis Agnew, sheriff of Cook county.

Attest: HERMANN LIEB,
Clerk of the County Court of Cook County.

In the Matter of the Application of HENRY B. MILLER, County Treasurer and *ex Officio* Collector of the Revenue of Cook County, in the State of Illinois, for judgment for the delinquent State, county, town, school, road, and park taxes, and special assessments levied and assessed upon the lands and lots in the county of Cook, in the State of Illinois, for the year 1874, and for judgment for the delinquent State, county, town, school, road, and park taxes and special assessments (if any) and costs thereon contained in the collector's books, with the warrants attached thereunto, issued by the county clerk of Cook county, State of Illinois, for the year 1873, which remain due and unpaid, and for judgment for the amounts for which lands and lots in said county were forfeited to the State of Illinois for the taxes and assessments for the year 1873, together with the interest, at 10 per cent., and costs, remaining due and unpaid thereon.

And now, on this 17th day of July, A. D. 1875, the same being one of the days of the June term, A. D. 1875, of this court, again comes Henry B. Miller, county treasurer and *ex officio* collector of the revenue of Cook county, by John M. Rountree, Esquire, county attorney of said county; also come the several parties owners of and interested in the several lands and lots in the foregoing list described, who have heretofore severally filed objections herein to the rendition of judgment against said lands and lots in which they are interested respectively, *and* the court having heard the evidence adduced and the arguments of counsel and having duly considered the same and being now fully advised in the premises.

And it is further considered and ordered by the court that all objection to the rendition of judgment against the several lands and lots in the foregoing list described, opposite the description of which in said list the words "judgment refused" are written, there
126 being nothing written after said words to limit or confine the same to any particular tax or special assessment or forfeiture, be, and the same are hereby, sustained, and judgment is hereby refused as to said several lands and lots.

It is further considered and ordered by the court that wherever in said list there is noted opposite the description of any land or lot "judgment refused" for any particular tax or special assessment, or forfeiture or costs, judgment is hereby refused against said land or lot for said tax or special assessment or forfeiture or costs as to which judgment is noted refused as aforesaid.

And it is further ordered that all other objections filed herein to the rendition of judgment against the lands and lots in the foregoing list described be, and the same are hereby, overruled.

And whereas due notice has been given of the intended application for judgment against said lands and lots and no sufficient defense having been made or cause shown why judgment should not be entered against said lands and lots for the taxes, special assessments, forfeitures, interest, and costs due and unpaid thereon for the years herein set forth, except when judgment has been refused as aforesaid: Therefore it is considered and ordered by the court that

judgment be, and is hereby, entered against the aforesaid tract or tracts or lots of land, as the case may be, in favor of the people of the State of Illinois for the sum annexed to the description of each, less any particular tax or assessment for forfeiture or cost for which judgment has been refused as aforesaid, being the amount of taxes, special assessments, forfeiture, interest, and costs due and unpaid severally thereon.

And it is ordered by the court that the said several tracts or lots of land or so much of each of them as shall be necessary to satisfy the amount of taxes, special assessments, forfeitures, interest, and costs annexed to them severally due and unpaid thereon be sold as the law directs.

And it is further ordered that all parties desiring to appeal from said judgment file their appeal bonds within twenty days from the date hereof.

And it is further ordered that all parties appealing from said judgment to the supreme court of the State of Illinois file their appeal bonds in the penal sum of double the amount of the taxes and assessments, with surety to be approved by the clerk of this court, and that when appeal is taken to the circuit court of Cook county from the same bond be filed in double the amount of judgment appealed from, with surety to be approved by the court.

M. R. M. WALLACE,
County Judge.

127 STATE OF ILLINOIS, } ss:
County of Cook, }

I, Hermann Lieb, clerk of the county court of Cook county, in the State aforesaid, do hereby certify that the foregoing is a correct record of the tracts, parcels of land, and town lots in the county of Cook and State of Illinois against which judgment was entered for delinquent taxes and special assessments of the years 1874 and back taxes and forfeitures to State of 1873, etc., together with interest and costs due and unpaid thereon, by the county court of Cook county on the fourteenth day of July, A. D. 1875, and of the orders of judgment and sale made and entered by said court on the date aforesaid.

In testimony whereof I have hereunto set my hand and affixed the seal of the county court of Cook county, at Chicago, in said county, this second day of August, A. D. 1875.

[SEAL.] HERMANN LIEB,
Clerk of the County Court of Cook County.

The sale for the State and county taxes of A. D. 1874 and for the forfeitures to State of 1873 was closed on the seventeenth (17th) day of November, A. D. 1875.

HERMANN LIEB,
County Clerk.

STATE OF ILLINOIS, } ss:
County of Cook, }

I, M. W. Ryan, clerk of the county court of Cook county, in the

State aforesaid, and keeper of the records and files thereof, do hereby certify that the foregoing is a true and correct copy of the county collector's published delinquent list for the general taxes of 1874, and also the judgment record for said year's taxes, with the final order of judgment and sale entered by the county court of Cook county, and also a true and correct copy of the precept and record of sale for said taxes of 1874, in so far as all the foregoing relates to the premises described in the foregoing copy; all of which appears from the records and files of my office.

In witness whereof I have hereunto set my hand and affixed the seal of said county court, at my office, in the city of Chicago, in said county, this 31st day of January, A. D. 1884.

[SEAL.] M. W. RYAN,
Clerk of the County Court.

128 Mr. DECKER: I next offer in evidence a certified copy of the notices, affidavits, and adjusts of sale upon which deeds No. K 56 and K 57, dated February 6th, 1878, were issued upon the premises in question.

Marked "Exhibit E," as follows:

Application.

STATE OF ILLINOIS, } ss:
County of Cook, }

Hiram Coombs, of lawful age, being duly sworn, says that he resides in said county, and that he, this affiant, relies upon the facts stated in this and other affidavits hereto annexed as being in full compliance with the constitution and the revenue laws of the State of Illinois in this behalf, and requests that a deed of the premises described in the annexed certificate of tax sale may be issued to him, this affiant, as provided by law.

HIRAM COOMBS.

Subscribed and sworn to before me this twenty-third day of February, A. D. 1878.

[SEAL.] EDWIN DRURY,
Notary Public.

STATE OF ILLINOIS, } ss:
County of Cook, }

Ulysses G. Taylor, of lawful age, being duly sworn, says that he resides in said county, and is the agent of J. A. Shepard; that as such agent deponent, on the 17th day of February, A. D.
129 1877, served a notice, of which the annexed notice is a true copy, on Wm. Kolz by handing the same to and leaving the same with him personally; also, on the 5th day of March, A. D. 1877, served a copy of said notice of J. A. Lomax by handing the same to and leaving the same with him personally; also, on the 17th day of March, A. D. 1877, served a copy of said notice on A.

H. Pickering by handing the same to and leaving the same with him personally, all in Cook county.

ULYSSES G. TAYLOR.

Sworn to this 7th day of July, A. D. 1877, before me—
[SEAL.] AUGUSTUS N. GAGE,
Notary Public.

STATE OF ILLINOIS, } ss:
County of Cook, }

Ulysses G. Taylor, of lawful age, being duly sworn, says that he resides in said county, and is the agent of J. A. Shepard; that as such agent deponent, on the 17th day of February, A. D. 1877, served a notice, of which the annexed notice is a true copy, on Jacob Crosca by handing the same to and leaving the same with him, said Jacob Crosca. Deponent is acquainted with the land or lot mentioned in said notice, and the person so served was the only person in possession thereof three months before the time of redemption from the sale mentioned in said notice expired, to wit, on the 17th day of February, A. D. 1877, and for more than thirty days previous and subsequent thereto; but the said land or lot was taxed in the name of Horton in the years 1874 and 1876 and in the name
130 of Harton in the year 1875, and that after diligent search and inquiry within the county aforesaid for said Horton and said Harton, the persons in whose name- the said land or lot described in copy of notice attached hereto was taxed, this affiant was unable to find them or hear of their being within said county or a resident thereof, and so says that said Horton and Harton, at said date and three months before the time of redemption from the sale mentioned in said notice expired as aforesaid, did not reside in said county of Cook.

ULYSSES G. TAYLOR.

Sworn to this 7th day of July, A. D. 1877, before me—
[SEAL.] AUGUSTUS N. GAGE,
Notary Public.

STATE OF ILLINOIS, } ss:
County of Cook, }

Thomas Cross, of lawful age, being duly sworn, says he resides in said county, and is the agent of J. A. Shepard; that as such agent deponent, on the 30th day of April, A. D. 1877, served a copy of the annexed notice on A. H. Pickering by handing the same to and leaving the same with him personally; also, on the 4th day of May, A. D. 1877, served a copy of said notice on Asahel Gage by handing the same to and leaving the same with him personally; also, on the 16th day of May, A. D. 1877, served a copy of said notice on J. A. Lomax by handing the same to and leaving the same with him personally, all at Chicago, in said county.

THOMAS CROSS.

Sworn to this 7th day of July, A. D. 1877, before me—
[SEAL.] EDWIN DRURY,
Notary Public.

131 STATE OF ILLINOIS, } ss:
County of Cook, City of Chicago, }

Asahel Gage, of lawful age, being first duly sworn, doth depose and say that J. A. Shepard advertised the tax sale described in the annexed notice three (3) times, to wit, on the 18th, 19th, and 20th days of April, A. D. 1877, in the "Chicago Post," a newspaper of general circulation in the city of Chicago, county of Cook, and State of Illinois.

ASAHEL GAGE.

Subscribed and sworn to this 7th day of July, 1877, before me—
[SEAL.] AUGUSTUS N. GAGE,
Notary Public.

To whom it may concern:

This is to notify you that on the 21st day of August, 1875, the undersigned purchased, at a sale of lots and lands for taxes and special assessments authorized by the laws of the State of Illinois, the following-described real estate, taxed in the name of Horton and Harton, to wit: Except 12.64 acres in S. E. corner of sublot 1, lot 1, in north section, Robinson's reserve, taxed or specially assessed for the year 1874, and that the time of redemption thereof from said sale will expire on the 21st day of August, 1877.

J. A. SHEPARD.

State and County Certificate of Sale for Taxes of A. D. 1874, *&c.*

132 No. 161. Volume 2, page 249.

STATE OF ILLINOIS, } ss:
Cook County, }

This is to certify that at the June term, A. D. 1875, of the county court of said Cook county, on the application of Henry B. Miller, county treasurer and *ex officio* collector of the revenue of Cook county, for judgment for the delinquent State, county, town, school, road, and park taxes and special assessments levied and assessed upon the lands and lots in the county of Cook and State of Illinois for the year 1874, and for judgment for the amount for which lands and lots were forfeited to the State of Illinois at the annual tax sale for State and county taxes for the year 1873, together with printer's fees, interest at ten per cent., and back taxes, and costs remaining due and unpaid thereon, and returned delinquent and unpaid by the town collectors of State and county taxes for said several years, pursuant to law, a judgment was entered against the following-described lands or lots for so much of the said taxes and special assessments and the amount for which the same were forfeited to the State as aforesaid as were found to be due thereon and costs, being for the sum of sixteen dollars and 67 cents as follows, to wit:

Taxes, etc., A. D. 1874	$16 27
Aggregate amount due on forfeiture at tax sale for taxes of A. D. 1873	
Back taxes, 1873	
Costs	40
Total	$16 67

And in and by said judgment it was ordered by said court that said lands or lots or so much thereof as should be sufficient
133 to satisfy the amount of said judgment be sold as the law directs, to wit, ex. 12.64 ac. in S. E. cor. sublot 1, lot 1, block —, in north section of Robinson's reserve, section —, town. — N., range — east, of the third principal meridian, situated in said Cook county.

And that, in pursuance of the statute in such case made and provided, process was issued to said treasurer and *ex officio* collector of said county to sell said lands or lots or so much thereof as should be necessary to satisfy the said judgment; that by virtue of said process said collector did, on the 2nd day of August, A. D. 1875, open the sale upon said process, and, said sale being duly continued from day to day by adjournments duly announced and the same being reached in its order, said collector did this day offer for sale and did sell so much of said lands or lots as would pay the sum aforesaid, and that J. A. Shepard became the purchaser of the whole of said lands or lots and paid thereon the sum aforesaid, that being the least quantity of said lands or lots for which any person would pay the said amount due thereon:

Now, therefore, in case the said lands or lots above sold are not redeemed, in manner and form as the law directs, within two years from the date hereof, the said purchaser, his heirs or assigns, will be entitled to receive a deed of the lands or lots above sold, as by law directed. Unless the holder of this certificate takes out the deed, as entitled by law, and files the same for record within one year from and after the time for redemption expires, then this certificate shall from and after the expiration of such one year be absolutely null. If the holder of this certificate shall be prevented from obtaining a deed by injunction or order of any court or by refusal of the clerk to execute the same, the time he is so prevented shall be excluded from the computation of such time.

134 In witness whereof I have hereunto subscribed my name and affixed the seal of said county court, at Chicago, in said county, this 21st day of August, A. D. 1875.

[SEAL.] HERMAN LIEB,
Clerk of the County Court.

Countersigned.
H. B. MILLER,
Treasurer and ex Officio Collector of Cook County.

No. K 56.

Filed Feb'y 26th, 1878, and deed issued to Hiram Coombs.
E. F. C. KLOKKE, *Co. Clerk.*

For a valuable consideration I hereby sell, endorse, assign, transfer, and set over the within certificate to Hiram Coombs, this 2nd day of August, 1877, without recourse.

J. A. SHEPARD.

Application.

STATE OF ILLINOIS, } ss :
County of Cook, }

Hiram Coombs, of lawful age, being duly sworn, says that he resides in said county, and that he, this affiant, relies upon the facts stated in this and other affidavits hereto annexed as being in full compliance with the constitution and the revenue laws of the State of Illinois in this behalf, and requests that a deed of the premises described in the annexed certificate of tax sale may be issued to him, this affiant, as provided by law.

HIRAM COOMBS.

135 Subscribed and sworn to before me this twenty-third day of February, A. D. 1878.

[SEAL.] EDWIN DRURY,
Notary Public.

STATE OF ILLINOIS, } ss :
County of Cook, }

Thomas Cross, of lawful age, being duly sworn, says that he resides in said county, and is the agent of J. A. Shepard; that as such agent deponent, on the 30th day of April, A. D. 1877, served a copy of the annexed notice on A. H. Pickering by handing the same to and leaving the same with him personally; also, on the 4th day of May, A. D. 1877, served a copy of said notice on Asahel Gage by handing the same to and leaving the same with him personally; also, on the 16th day of May, A. D. 1877, served a copy of said notice on J. A. Lomax by handing the same to and leaving the same with him personally, all at Chicago, in said county.

But the said land or lot was taxed in the name of I. Marshall and J. Marshall, and that after diligent search and inquiry within the county aforesaid for I. Marshall and J. Marshall, the persons in whose name- the said land or lot described in copy of notice attached hereto was taxed, this affiant was unable to find them or hear of their being within said county or a resident thereof, and so says that said I. Marshall and J. Marshall, at said date and three months before the time of redemption from the sale mentioned in said notice expired as aforesaid, did not reside in said county of Cook.

THOMAS CROSS.

Sworn to this 7th day of July, A. D. 1877, before me—
[SEAL.] EDWIN DRURY,
Notary Public.

136 STATE OF ILLINOIS, } ss:
County of Cook, }

Ulysses G. Taylor, of lawful age, being duly sworn, says that he resides in said county and is the agent of J. A. Shepard; that as such agent deponent, on the 17th day of February, A. D. 1877, served a notice, of which the annexed notice is a true copy, on Wm. Kolz, by handing the same to and leaving the same with him personally; also on the 5th day of March, A. D. 1877, served a copy of said notice on J. A. Lomax, by handing the same to and leaving the same with him personally; also on the 17th day of March, A. D. 1877, served a copy of said notice on A. H. Pickering, by handing the same to and leaving the same with him personally, all in Cook county.

ULYSSES G. TAYLOR.

Sworn to this 7th day of July, A. D. 1877, before me—
[SEAL.] AUGUSTUS N. GAGE,
Notary Public.

STATE OF ILLINOIS, } ss:
County of Cook, }

Ulysses G. Taylor, of lawful age, being duly sworn, says that he resides in said county and is the agent of J. A. Shepard; that as such agent deponent, on the 17th day of February, A. D. 1877, served a notice, of which the annexed notice is a true copy, on Jacob Crosco, by handing the same to and leaving the same with him, said Jacob Crosco, personally, in said county.

Deponent is acquainted with the land or lot mentioned in said notice, and the person so served was the only person in possession thereof three months before the time of redemption from the
137 sale mentioned in said notice expired, to wit, on the 17th day of February, A. D. 1877, and for more than thirty days previous and subsequent thereto; but the said land or lot was taxed in the name of I. Marshall and J. Marshall, and deponent served a notice, of which the annexed notice is a true copy, on said I. Marshall and J. Marshall by handing the same to and leaving the same with J. M. Marshall for said I. Marshall and J. Marshall, at Chicago, in said county, on the 17th day of March, A. D. 1877.

ULYSSES G. TAYLOR.

Sworn to this 7th day of July, A. D. 1877, before me—
[SEAL.] AUGUSTUS N. GAGE,
Notary Public.

STATE OF ILLINOIS, } ss:
County of Cook, City of Chicago, }

Asahel Gage, of lawful age, being first duly sworn, doth depose and say that J. A. Shepard advertised the tax sale described in the

No. K 56.

Filed Feb'y 26th, 1878, and deed issued to Hiram Coombs.
E. F. C. KLOKKE, *Co. Clerk.*

For a valuable consideration I hereby sell, endorse, assign, transfer, and set over the within certificate to Hiram Coombs, this 2nd day of August, 1877, without recourse.

J. A. SHEPARD.

Application.

STATE OF ILLINOIS, } ss :
County of Cook, }

Hiram Coombs, of lawful age, being duly sworn, says that he resides in said county, and that he, this affiant, relies upon the facts stated in this and other affidavits hereto annexed as being in full compliance with the constitution and the revenue laws of the State of Illinois in this behalf, and requests that a deed of the premises described in the annexed certificate of tax sale may be issued to him, this affiant, as provided by law.

HIRAM COOMBS.

135 Subscribed and sworn to before me this twenty-third day of February, A. D. 1878.

[SEAL.] EDWIN DRURY,
Notary Public.

STATE OF ILLINOIS, } ss :
County of Cook, }

Thomas Cross, of lawful age, being duly sworn, says that he resides in said county, and is the agent of J. A. Shepard; that as such agent deponent, on the 30th day of April, A. D. 1877, served a copy of the annexed notice on A. H. Pickering by handing the same to and leaving the same with him personally; also, on the 4th day of May, A. D. 1877, served a copy of said notice on Asahel Gage by handing the same to and leaving the same with him personally; also, on the 16th day of May, A. D. 1877, served a copy of said notice on J. A. Lomax by handing the same to and leaving the same with him personally, all at Chicago, in said county.

But the said land or lot was taxed in the name of I. Marshall and J. Marshall, and that after diligent search and inquiry within the county aforesaid for I. Marshall and J. Marshall, the persons in whose name the said land or lot described in copy of notice attached hereto was taxed, this affiant was unable to find them or hear of their being within said county or a resident thereof, and so says that said I. Marshall and J. Marshall, at said date and three months before the time of redemption from the sale mentioned in said notice expired as aforesaid, did not reside in said county of Cook.

THOMAS CROSS.

Sworn to this 7th day of July, A. D. 1877, before me—
[SEAL.] EDWIN DRURY,
Notary Public.

136 STATE OF ILLINOIS, } ss:
County of Cook, }

Ulysses G. Taylor, of lawful age, being duly sworn, says that he resides in said county and is the agent of J. A. Shepard; that as such agent deponent, on the 17th day of February, A. D. 1877, served a notice, of which the annexed notice is a true copy, on Wm. Kolz, by handing the same to and leaving the same with him personally; also on the 5th day of March, A. D. 1877, served a copy of said notice on J. A. Lomax, by handing the same to and leaving the same with him personally; also on the 17th day of March, A. D. 1877, served a copy of said notice on A. H. Pickering, by handing the same to and leaving the same with him personally, all in Cook county.

ULYSSES G. TAYLOR.

Sworn to this 7th day of July, A. D. 1877, before me—
[SEAL.] AUGUSTUS N. GAGE,
Notary Public.

STATE OF ILLINOIS, } ss:
County of Cook, }

Ulysses G. Taylor, of lawful age, being duly sworn, says that he resides in said county and is the agent of J. A. Shepard; that as such agent deponent, on the 17th day of February, A. D. 1877, served a notice, of which the annexed notice is a true copy, on Jacob Crosco, by handing the same to and leaving the same with him, said Jacob Crosco, personally, in said county.

Deponent is acquainted with the land or lot mentioned in said notice, and the person so served was the only person in possession thereof three months before the time of redemption from the
137 sale mentioned in said notice expired, to wit, on the 17th day of February, A. D. 1877, and for more than thirty days previous and subsequent thereto; but the said land or lot was taxed in the name of I. Marshall and J. Marshall, and deponent served a notice, of which the annexed notice is a true copy, on said I. Marshall and J. Marshall by handing the same to and leaving the same with J. M. Marshall for said I. Marshall and J. Marshall, at Chicago, in said county, on the 17th day of March, A. D. 1877.

ULYSSES G. TAYLOR.

Sworn to this 7th day of July, A. D. 1877, before me—
[SEAL.] AUGUSTUS N. GAGE,
Notary Public.

STATE OF ILLINOIS, } ss:
County of Cook, City of Chicago, }

Asahel Gage, of lawful age, being first duly sworn, doth depose and say that J. A. Shepard advertised the tax sale described in the

annexed notice three (3) times, to wit, on the 18th, 19th, and 20th days of April, A. D. 1877, in the "Chicago Post," a newspaper of general circulation in the city of Chicago, county of Cook and State of Illinois.

ASAHEL GAGE.

Subscribed and sworn to this 7th day of July, 1877, before me—
[SEAL.] AUGUSTUS N. GAGE,
Notary Public.

138 To whom it may concern:

This is to notify you that on the 21st day of August, 1875, the undersigned purchased, at a sale of lots and lands for taxes and special assessments authorized by the laws of the State of Illinois, the following-described real estate, taxed in the name of I. Marshall and J. Marshall, to wit, 12.64 acres in S. E. corner of sublot 1, lot 1, in north section Robinson's reserve, taxed or specially assessed for the year 1873 and 1874, and that the time of redemption thereof from said sale will expire on the 12th day of August, 1877.

J. A. SHEPARD.

Redemption may be made at the office of the county clerk.

State and County Certificate of Sale for Taxes of A. D. 1874, &c.

No. 162. Volume 2, page 249.

STATE OF ILLINOIS, } ss:
Cook County, }

This is to certify that at the June term, A. D. 1875, of the county court of said Cook county, on the application of Henry B. Miller, county treasurer and *ex officio* collector of the revenue of Cook county, for judgment for the delinquent State, county, town, school, road, and park taxes and special assessments levied and assessed upon the lands and lots in the county of Cook and State of Illinois for the year 1874, and for judgment for the amount for which lands and lots were forfeited to the State of Illinois at the annual tax sale for State and county taxes for the year 1873, together with print-
139 er's fees, interest at ten per cent., and back taxes and costs remaining due and unpaid thereon and returned delinquent and unpaid by the town collectors of State and county taxes for said several years, pursuant to law, a judgment was entered against the following-described lands or lots for so much of the said taxes and special assessments and the amount for which the same were forfeited to the State as aforesaid as were found to be due thereon, and costs, being for the sum of eleven dollars and 26 cents, as follows, to wit:

Taxes, etc., A. D. 1874	$5 12
Aggregate amount due on forfeiture at tax sale for taxes of A. D. 1873	5 61
Back taxes, 1873	
Costs	53
Total	$11 26

And in and by said judgment it was ordered by said court that said lands or lots or so much thereof as should be sufficient to satisfy the amount of said judgment be sold as the law directs, to wit, 12.64 ac. in S. E. cor. sublot 1, lot 1, block —, in north section Robinson's reserve, section —, town. — N., range — east, of the third principal meridian, situated in said Cook county.

And that in pursuance of the statute in such case made and provided process was issued to said treasurer and *ex officio* collector of said county to sell said lands or lots or so much thereof as should be necessary to satisfy the said judgment; that by virtue of said process said collector did, on the 2nd day of August, A. D. 1875, open the sale upon said process; and said sale being duly continued from day to day by adjournment duly announced, and the same being reached in its order, said collector did, this day, offer for sale
140 and did sell so much of said lands or lots as would pay the sum aforesaid, and that J. A. Shepard became the purchaser of the whole of said lands or lots and paid thereon the sum aforesaid, that being the least quantity of said lands or lots for which any person would pay the said amount due thereon.

Now, therefore, in case the said lands or lots above sold are not redeemed, in manner and form as the law directs, within two years from the date hereof, the said purchaser, his heirs or assigns, will be entitled to receive a deed of the lands or lots above sold, as by law directed. Unless the holder of this certificate takes out the deed as entitled by law and files the same for record within one year from and after the time for redemption expires, then this certificate shall, from and after the expiration of such one year, be absolutely null. If the holder of this certificate shall be prevented from obtaining a deed by injunction or order of any court or by refusal of the clerk to execute the same, the time he is so prevented shall be excluded from the computation of such time.

In witness whereof I have hereunto subscribed my name and affixed the seal of said county court, at Chicago, in said county, this 21st day of August, A. D. 1875.

[SEAL.] HERMAN LIEB,
Clerk of the County Court.

Countersigned:
H. B. MILLER,
Treasurer and ex Officio Collector of Cook County.

Filed Feb'y 26th, 1878, and deed issued to Hiram Coombs.
E. F. C. KOLKKE, *Co. Clerk.*

141 For a valuable consideration I hereby sell, endorse, assign, transfer, and set over the within certificate to Hiram Coombs, this 2nd day of August, 1877, without recourse.

J. A. SHEPARD.

STATE OF ILLINOIS, } ss:
County of Cook, }

I, M. W. Ryan, clerk of the county court of Cook county, in the State aforesaid, and keeper of the records and files thereof, do hereby

certify that the foregoing is a true and correct copy of the notices, affidavits, and certificates of sale upon which deeds Nos. K 56 and K 57, dated February 26th, 1878, *was* issued to Hiram Coombs by the county clerk of Cook county; all of which appears from the records and files of my office.

In witness whereof I have hereunto set my hand and affixed the seal of said county court, at my office, in the city of Chicago, this 31st day of January, A. D. 1884.

[SEAL.]

M. W. RYAN,
Clerk of the County Court.

Mr. DECKER: I next offer in evidence a deed from E. F. C. Klokke, county clerk of Cook county, Illinois, to Hiram Coomes, designated No. K 56, with certificate of record endorsed thereon, being $12\frac{64}{100}$ acres in the southeast corner of sublot one, marked "Exhibit F," as follows:

STATE OF ILLINOIS, } ss:
Cook County, }

142 Whereas at a public sale of real estate for the non-payment of taxes made in the county aforesaid, on the twenty-first (21) day of August, A. D. 1875, the following-described real estate was sold, to wit:

Twelve and sixty-four one-hundredths acres (12.64 ac.) in southeast corner of sublot one (1) of lot one (1), in north section Robinson's reserve, situated in said Cook county and State of Illinois;

And whereas the same not having been redeemed from said sale, and it appearing that the holder of the certificate of purchase of said real estate has complied with the laws of the State of Illinois necessary to entitle him to a deed of said real estate:

Now, therefore, know ye that I, E. F. C. Klokke, county clerk of said county of Cook, in consideration of the premises and by virtue of the statutes of the State of Illinois in such cases provided, do hereby grant and convey unto Hiram Coombs, his heirs and assigns forever, the said real estate hereinbefore described, subject, however, to any redemption provided by law.

The following provision of the Revised Statutes of said State of Illinois, being section 225 of chapter 120, is recited pursuant to law:

"Unless the holder of the certificate for real estate purchased at any tax sale under this act takes out the deed as entitled by law and files the same for record within one year from and after the time for redemption expires, the said certificate or deed and the sale on which it is based shall, from and after the expiration of such one year, be absolutely null. If the holder of such certificate shall be prevented from obtaining such deed by injunction or order of any court or by the refusal of the clerk to execute the same, the time he is so prevented shall be excluded from the computation of such time."

143 Given under my hand and the seal of our court this twenty-sixth day of February, A. D. 1878.

E. F. C. KLOKKE,
County Clerk.

STATE OF ILLINOIS, }
County of Cook, City of Chicago, } ss:

On this twenty-sixth day of February, A. D. 1878, before me, J. P. Voswinkel, a notary public in and for said county, personally appeared E. F. C. Klokke, county clerk of said county of Cook, personally known to me to be the real person whose name is subscribed to the above deed as having executed the same, and acknowledged that he executed the same as such county clerk voluntarily and freely for the uses and purposes therein set forth.

Given under my hand and notorial seal the day and year aforesaid.

[SEAL.]

J. P. VOSWINKEL,
Notary Public.

No. K 56.

STATE OF ILLINOIS, }
Cook County. } No. 170,954.

This instrument was filed for record on the 1 day of March, A. D. 1878, at the hour of 11 o'clock a. m., and duly recorded in Book 817 of Records, at page 31.

JAMES W. BROCKWAY,
Recorder of Deeds.

Mr. DECKER: I next offer tax deed No. K 57, of E. F. C. Klokke, county clerk of Cook county, Illinois, to Hiram Coomes of lot one, except 12.64 acres, with certificate of record endorsed thereon,
144 marked "Exhibit G," as follows:

STATE OF ILLINOIS, }
Cook County, } ss:

Whereas at a public sale of real estate for the non-payment of taxes made in the county aforesaid on the twenty-first (21) day of August, A. D. 1875, the following-described real estate was sold, to wit:

Except twelve and sixty-four one-hundredths acres (12.64 ac.) in southeast corner of sublot one (1) of lot one (1), in north section Robinson's reserve, situated in said Cook county and State of Illinois;

And whereas the same not having been redeemed from said sale, and it appearing that the holder of the certificate of purchase of said real estate has complied with the laws of the State of Illinois necessary to entitle him to a deed of said real estate:

Now, therefore, know ye that I, E. F. C. Klokke, county clerk of said county of Cook, in consideration of the premises and by virtue of the statutes of the State of Illinois in such cases provided, do

hereby grant and convey unto Hiram Coombs, his heirs and assigns forever, the said real estate hereinbefore described, subject, however, to any redemption provided by law.

The following provision of the Revised Statutes of said State of Illinois, being section 225 of chapter 120, is recited pursuant to law:

"Unless the holder of the certificate for real estate purchased at any tax sale under this act takes out the deed as entitled by law and files the same for record within one year from and after the time for redemption expires, the said certificate or deed and
145 the sale on which it is based shall from and after the expiration of such one year be absolutely null. If the holder of such certificate shall be prevented from obtaining such deed by injunction or order of any court or by the refusal of the clerk to execute the same, the time he is so prevented shall be excluded from the computation of such time."

Given under my hand and the seal of our court this twenty-sixth day of February, A. D. 1878.

E. F. C. KLOKKE,
County Clerk.

STATE OF ILLINOIS, }
County of Cook, City of Chicago, } ss:

On this twenty-sixth day of February, A. D. 1878, before me, J. P. Voswinkel, a notary public in and for said county, personally appeared E. F. C. Klokke, county clerk of said county of Cook, personally known to me to be the real person whose name is subscribed to the above deed as having executed the same, and acknowledged that he executed the same as such county clerk voluntarily and freely for the uses and purposes therein set forth.

Given under my hand and notorial seal the day and year aforesaid.

J. P. VOSWINKEL,
Notary Public.

[SEAL.]

No. K 57.

STATE OF ILLINOIS, }
Cook County. }

No. 170,955.

This instrument was filed for record on the 1 day of March, A. D. 1878, at the hour of 11 o'clock a. m., and duly recorded in Book 817 of Records, at page 32.

146 JAMES W. BROCKWAY,
Recorder of Deeds.

Mr. DECKER: Also quitclaim deed from Hiram Coombs and wife to Aquila H. Pickering, dated the 12th day of March, 1878, under seal, acknowledged before Edwin Drury, notary public, being of the sublot one of lot one, excepting 12.64 acres, marked "Exhibit H," as follows:

This indenture witnesseth: That the grantor-, Hiram Coombs and Emily Coombs, of the village of Ridgeland, in the county of Cook and State of Illinois, for the consideration of one dollar, convey and quitclaim to Aquila H. Pickering, of the city of Chicago, county of Cook and State of Illinois, all interest in the following-described real estate, to wit:

Except twelve and sixty-four one hundredths acres (12.64 acres) in southeast corner of sublot one (1) of lot one (1), in north section of Robinson's reserve; also twelve and sixty-four one hundred acres (12.64) in southeast corner of sublot one (1) of lot one (1), in north section of Robinson's reserve, situated in the county of Cook, in the State of Illinois, hereby releasing and waiving all rights under and by virtue of the homestead exemption laws of this State.

Dated this twelfth day of March, A. D. 1878.

HIRAM COOMBS. [SEAL.]
EMILY COOMBS. [SEAL.]

STATE OF ILLINOIS, } ss:
County of Cook, }

I, Edwin Drury, a notary public in and for said county, in
147 the State aforesaid, do hereby certify that Hiram Coombs and Emily Coombs, his wife, personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that they signed, sealed, and delivered the said instrument as their free and voluntary act for the uses and purposes therein set forth, including the release and waiver of the right of homestead.

Given under my hand and notorial seal this twelfth day of March, A. D. 1878.

[SEAL.] EDWIN DRURY,
Notary Public.

A. H. PICKERING, recalled, testified:

Direct examination by Mr. DECKER:

Q. I did not ask you yesterday in relation to the Dyer deed, whether it was under seal or not, the Dyer deed to you?

A. It was under seal; a scroll made around, with the seal inside.

Q. What consideration was recited?

A. The consideration in the deed was $1,600.

Q. Was there a scroll seal after both signatures to the deed?

A. Yes.

Q. In your testimony you spoke of a deed from Horton to the administrator, Leon Strauss. What did you mean by that?

A. What I wished to convey was that the conveyance from Horton to Strauss—I will put it in this way: Leon Strauss deeded to Moses Baer as the administrator of John H. Horton.

Q. You did not mean, then, that you had a deed from Horton to the administrator?

A. Only to the administrator; the administrator didn't
148 give a deed—I mean Horton didn't give a deed. The administrator did give a deed.

(By Mr. HERVEY:)

Q. Horton was dead and the property was inventoried as belonging to his estate?

A. Yes, sir.

Q. You pronounce that name Beers. Do you know how that name is spelt?

A. I do not know that I do. I should spell it Baer or Bier. Beer is the way they called it. I don't think there is any s on it.

Q. In speaking of the deeds that you had you spoke of a deed from Kappmeier and wife to Gotthelf. Do you desire to make any explanation about that?

A. The deed from Charles Kappmeier was made to Leon Strauss; Leon Strauss to Moritz Gotthelf.

Q. Did you have those two deeds, to wit, the deed from Kappmeier to Strauss and from Strauss to Gotthelf?

A. I did; I had them all.

Q. You did not mention a quitclaim deed from Strauss and wife to Dyer.

A. There was a deed made just before I got the deed from Leon Strauss and wife—a quitclaim deed to Mr. Dyer.

Q. You had that also?

A. I had that also; I had all the deeds.

Q. These last-mentioned deeds were lost as well as the others?

A. All of them lost at the same time.

Which was all the evidence offered in the case, there being no evidence offered on the part of the defendants.

Defendants' counsel moved that the plaintiff's testimony
149 be excluded and the case dismissed, first, on the ground that the very foundation of their title fails, in that the deed from Joseph Robinson to Horton, made in 1858, was made in direct violation of the terms of the patent as to obtaining the approval of the President to the conveyance.

Secondly, that Mr. Pickering had no right to let his property be sold for taxes and then acquire title under a tax deed.

Motion sustained by the court; to the sustaining of which motion counsel for plaintiff then and there excepted.

The COURT: I will decide first that Robinson had no authority to convey without obtaining the permission of the President beforehand; that the subsequent sanction obtained by persons claiming title under Robinson was invalid.

Mr. DECKER: We except to that.

The COURT: Then I will decide also that even if the subsequent sanction of the President would have the effect of giving force to the deed, yet, as the grantee under that deed was dead, the administrator's deed would not carry any title to the purchaser from the administrator, but that if any title accrued by reason of the sanction of the President it would be to the heirs of Horton; and I will decide on the tax title that the notice is not good.

To which plaintiff, by his counsel, also excepted then and there.

And thereupon the plaintiff's counsel requested the court to hold the following propositions of law:

First. That under the treaty mentioned in the patent in evidence in this case and under the provisions of said treaty and patent it was not necessary for Joseph Robinson to apply to the
150 President of the United States in the first instance for leave to convey, but that the President had power to approve any deed said Joseph Robinson might make subsequent to the execution and delivery of such deed, and that the approval of the President of any such deed subsequent to the execution and delivery thereof would make the same a valid deed of conveyance. Refused.

Second. That the approval by the President of the United States of the deed of Joseph Robinson and wife to John F. Horton, in evidence in this case, made by the President on the 21st day of January, 1871, gave force and effect to said deed and made the same a valid conveyance. Refused.

Third. That the approval by the President of the United States of the deed of Joseph Robinson to John F. Horton, made on the 21st day of January, 1871, by an endorsement on a certified copy of said deed, was a valid act on the part of the President, and by virtue thereof the said deed became a valid conveyance and took effect by relation back to the date of the original deed, in the absence of any other deed or approval to any other party from said Joseph Robinson, notwithstanding the death of said John F. Horton before the approval of said deed from Robinson to Horton. Refused.

Fourth. That the approval of the President of the United States of the deed from Joseph Robinson to John F. Horton, notwithstanding the same was made after the death of Horton, made the same a valid conveyance, and such conveyance inured to the benefit of the grantee of Leon Strauss, as administrator of the estate of said Horton, deceased. Refused.

Fifth. That in construing the description of the premises as given in the notice of the tax sale offered in evidence to support tax
151 deed number K 57 the same ought to be construed to be the same description as that contained in the judgment record offered in evidence, if such construction can be made by so punctuating the language of said description in said notice as to make the same mean the same as the description in said judgment record, or if the said description in said notice can be made to mean the same as the description contained in the judgment record by the rejection of the word "of" as surplusage, where it occurs in said description contained in said notice before the words "sublot 1," the said word "of" ought to be rejected as a surplusage in said description. Refused.

Sixth. The evidence offered by the plaintiff of a tax title to the premises in question in him is sufficient to entitle him to recover in this case. Refused.

Seventh. That the notice of the tax sale on which tax deed No. K 57, in evidence in this cause, was issued is a sufficient notice under the law to support said deed. Refused.

All of which propositions of law the court then *and* refused to hold, and thereupon the court found the issues for the defendants.

To which finding and decisions by the court the counsel for the plaintiff then and there excepted.

The plaintiff's counsel then moved that the findings of the court in favor of the defendants be set aside and for a new trial on the ground that the findings of the court were contrary to the law and the evidence of the case; which motion the court then and there overruled, and ordered judgment in favor of defendants and against plaintiff; to which plaintiff then and there, by his counsel, excepted.

152 And thereupon the court entered judgment on said finding; to the entering of which judgment plaintiff, by his counsel, then and there duly excepted.

And forasmuch as the matters above set forth do not fully appear of record the plaintiff tenders this his bill of exceptions and prays that the same may be signed and sealed by the judge of this court, pursuant to the statute in such case made, which is done accordingly this 21st day of July, A. D. 1885.

JOSEPH E. GARY, [SEAL.]
Judge Superior Court of Cook County.

STATE OF ILLINOIS, }
County of Cook, } *ss:*

I, Patrick McGrath, clerk of the superior court of Cook county in and for the State of Illinois, do hereby certify the above and foregoing to be a true, perfect, and complete transcript of the record in a certain cause lately pending in said court, on the common-law side thereof, wherein Aquila H. Pickering was plaintiff and John A. Lomax *et al.* were defendants.

Seal of Superior Court. In witness whereof I have hereunto set my hand and affixed the seal of said court, at Chicago, this 19th day of January, A. D. 1886.

P. McGRATH, *Clerk.*

Transcript fees, $45.00, paid by pl'ff's att'y.

P. McGRATH,
Clerk Superior Court of Cook Co.

153 In the Superior Court, Northern Grand Division, State of Illinois.

AQUILA H. PICKERING, Plaintiff in Error,
vs.
JOHN A. LOMAX and WILLIAM KOLZE, Defendants in Error. }

And now comes Aquila H. Pickering, plaintiff in error, by his attorneys, Bisbee, Ahrens & Decker, and assigns for error in the foregoing record the following:

1. The said superior court erred in granting the motion of defendants in the court below to exclude the plaintiff in error's testimony.

2. The said court erred in holding that the deed from Joseph Robinson to Horton, made in 1858, was void.

3. The said court erred in holding that Joseph Robinson had no authority to convey without obtaining the permission of the President beforehand.

(4.) The said court erred in holding that the subsequent sanction of the President, obtained by persons claiming title under Robinson, was invalid.

5. The said court erred in holding that if the subsequent sanction of the President had the effect of giving force to the deed from Joseph Robinson, yet, as the grantee under that deed was dead, the
154 deed by his administrator did not carry any title to the purchaser, and that if any title accrued by reason of the subsequent sanction of the President it would be to the heirs of Horton.

6. The said court erred in holding that the plaintiff in error had no right to acquire title to the property in controversy by tax deed.

7. The said court erred in holding that the notice- on which the tax deeds in evidence were based were not good.

8. The said court erred in holding that the tax deeds and the proceedings and notices on which they were based conveyed no title.

9. The said court erred in refusing to hold the 1st, 2nd, 3rd, 4th, 5th, 6th, and 7th propositions of law and each of them as requested by the plaintiff — error.

10. The said court erred in denying the plaintiff in error's motion to set aside the findings of the court and for a new trial.

11. The findings of the court below are against the law and the evidence in the case.

12. The judgment of the said court is contrary to the law and the evidence in the case.

13. The said court erred in entering the judgment aforesaid against said plaintiff in error in manner aforesaid.

BISBEE, AHRENS & DECKER,
Attorneys for Plaintiff.

155 And be it remembered that afterwards, to wit, on the 8th day of March, A. D. 1886, the same being one of the regular days of said term of court, certain proceedings were had and orders made by said court and entered of record, among which is the following, viz:

AQUILA H. PICKERING
vs.
JOHN A. LOMAX and WILLIAM KOLZE. } 68. Error to Superior Court Cook County.

Now, on this day, this cause comes on for hearing in the regular call of the docket, and it appearing to the court that a duly certified transcript of the record and proceedings of the court below, together with printed abstracts thereof and briefs and arguments of counsel in support of the errors assigned herein, have been duly filed, as required by law and the rules of this court in that behalf

made and provided, and that this cause is here submitted upon such transcript, abstracts, briefs, and arguments for the consideration and judgment of the court:

Therefore it is ordered by the court that this cause be, and the same is hereby, taken under advisement.

156 At a supreme court begun and held at Ottawa, on Tuesday, the first day of March, in the year of our Lord one thousand eight hundred and eighty-seven, within and for the northern grand division of the State of Illinois.

Present: Benj. R. Sheldon, acting chief justice; —— ——, justice; John Schofield, justice; Alfred M. Craig, justice; John H. Mulkey, justice; Simeon P. Shope, justice; Benj. D. Magruder, justice; George Hunt, Attorney-General; Lawrence Morrissey, sheriff; Alfred H. Taylor, clerk.

Be it remembered, to wit, on the 22nd day of March, A. D. 1887, the same being in vacation after the term of court aforesaid, the following proceedings were by said court had and entered of record, to wit:

AQUILA H. PICKERING *vs.* JOHN A. LOMAX and WILLIAM KOLZE.	1447.	23 A. D. Error to the Superior Court of Cook County.

On this day came again the said parties, and the court having diligently examined and inspected as well the record and proceedings aforesaid as the matters and things therein assigned for error, and being now sufficiently advised of and concerning the premises, for that it appears to the court now here that neither in the record and proceedings aforesaid nor in the rendition of the judgment aforesaid is there anything erroneous, vicious, or defective, and that that record is no error, therefore it is considered by the court that the judgment aforesaid be affirmed in all things and stand in full force and effect, notwithstanding the said matters and things

157 therein assigned for error.

And it is further considered by the court that the said defendant- in error recover of and from the said plaintiff in error their costs by them in this behalf expended, and that they have execution therefor.

And the opinion of the court, rendered upon the announcement of said decision, together with the dissenting opinion of Mr. Justice Sheldon, *are* in the words and figures following, to wit:

158 No. 23 A. D.

Opinion by CRAIG, *J.*:

This was an action of ejectment brought by Acquila H. Pickering against John Lomax and William Kolze to recover two certain parcels of land in Cook county which are particularly described in the declaration. The parties waived a jury and submitted to a trial before the court, which resulted in a judgment in favor of the defendants and the plaintiff sued out this writ of error.

On the trial, for the purpose of establishing title, plaintiff offered in evidence article 4 of the treaty between the United States and the Ottawa, Chippewa, and Pottawatamie Indians, contained in U. S. Statu. at Large, vol. 7, 371:

"ARTICLE IV.

There shall be granted by the United States to each of the following persons (being descendants from Indians) the following tracts of land, viz:

To Claude Laframboise, one section of land on the Riviere Aux Plaines, adjoining the line of the purchase of 1816.

To François Bourbonne, Jr., one section at the missionary establishment on the Fox river of the Illinois.

To Alexander Robinson, for himself and children, two sections on the Riviere Aux Plaines, above and adjoining the tract herein granted to Claude Laframboise.

The tracts of land herein stipulated to be granted shall never be leased or conveyed by the grantees or their heirs to any persons whatever without the permission of the President of the United States."

The plaintiff also put in evidence a copy of a patent issued by the United States Dec. 28th, 1843, under the provisions of the
159 treaty granting the lands to Alex. Robinson for himself and children, which contains this provision: "But never to be leased or conveyed by him, them, his or their heirs, to any person whatever without the permission of the President of the United States." Plaintiff also introduced in evidence proceedings in partition, instituted Feb. 22d, 1847, in Cook county court of common pleas, between Alexander Robinson and his children, of the lands granted by the patent, wherein the lands in question were set off to Joseph Robinson. The plaintiff also introduced evidence tending to establish the following conveyances: Deed, dated Aug. 3d, 1858, from Joseph Robinson and wife to John F. Horton; administrator's deed of Leon Strauss, administrator of the estate of John L. Horton, deceased, to Moses W. Baer, dated Oct. 6th, 1863, this deed having been made in pursuance of an order of sale by the county court of Cook county for payment of debts; then followed several intermediate conveyances of the premises down to a deed dated Nov. 10th, 1866, from Henry H. Dyer and wife to Aquila H. Pickering, the plaintiff. The deed from Robinson and wife to Horton, executed Aug. 3, 1858, has endorsed upon it the approval of the President of the United States of date Jan. 21st, 1871.

The treaty under which the lands were granted to Alex. Robinson and his children was concluded on the 29th day of July, 1829. Whether the deed executed Aug. 3, 1858, from Joseph Robinson and wife to John F. Horton without the permission of the President of the United States was sufficient to pass the title to the lands attempted to be conveyed involves a construction of the last clause of the treaty set out above, and also that clause of the patent prohibiting a conveyance without permission of the President. The object of

the condition in restraint of a sale is manifest. It was de-
160 signed for the benefit and protection of the Indian; as a safe-
guard to protect property bestowed upon him against fraud, imposition, and his own improvidence in the disposition of his lands. The wisdom of such a provision, in view of the condition of the Indian at the time and his liability to be defrauded out of his property unless the protecting hand of the Government was interposed in his behalf, is not nor can it be questioned. It is true that the patent issued to Robinson granted the fee in the lands; and we are not unmindful of the fact that a limitation upon the fee, as a general rule, is contrary to the policy of our law; but we think it is well settled in a case of this character that effect will be given to conditions imposed in a treaty and a patent issued by the Government in pursuance of a treaty made with the Indian tribes. The patent under which Robinson and his children derived their title to the land prohibits a lease or conveyance of the land by all or either of them without the permission of the President of the United States. The grant was made in pursuance of a treaty between the Government and the Indian tribes upon this condition. This mode of conveyance having been provided, by necessary implication any other is prohibited, and, being prohibited, it would seem to follow that the deed was invalid and passed no title. A case in many respects similar to this is Smith *vs.* Stevens, 10 Wal., 321. There a treaty was concluded by the U. S. on June, 1825, with the Kansas Indians. The 6th article provided that there should be reserved — each of the half-breeds (Victoria Smith being one of them) certain lands. The 11th article provided that the Indians shall never sell or dispose of the lands reserved without the permission of the United States for that purpose first had and obtained. On May 26th, 1860, Congress passed an act referring to the treaty of 1825, and reciting
that the land reserved had been surveyed and allotted to each
161 of certain half-breeds, in accordance with the 6th article of
the treaty; that all the title, interest, and estate of the United States is hereby vested in said reservees. The second section of the act provided that the Sec. of the Interior, upon the request of the reservees, is authorized to sell such lands for the benefit of such reservees in accordance with rules and regulations to be prescribed by the Commissioner of Indian Affairs and approved by the Sec. of Interior.

On the 14th day of Aug., 1860, Victoria Smith, one of the half-breeds, being in possession of her tract, executed a deed purporting to convey it to one Stevens, and he went into possession of the land. Subsequently Victoria Smith brought ejectment against Stevens to recover the land. As a defence he relied upon the deed of Aug. 14th, 1860, but the State courts of Kansas held the deed was void, and this ruling was affirmed in the Supreme Court of the United States. In the case cited the treaty provided that the lands reserved should not be conveyed without the consent of the United States, and the act of Congress subsequently passed vested the title in the Indian or half-breeds and provided for a sale by the Secretary of the Interior on request of the Indian. This mode of sale was disregarded

and an absolute deed made without the consent of the Secretary of the Interior, while in the case under consideration the treaty and patent requires the consent of the President to a sale. It seems plain that the rule which should control one case should be binding on the other. In disposing of the case in the Supreme Court it is said: It was considered by Congress to be necessary in case the reservee should be desirous of relinquishing the occupation of their lands that some method of disposing of them should be adopted which would be a safeguard against their own improvi-
162 dence, and the power of Congress to impose a restriction on the right of alienation in order to accomplish this object cannot be questioned. It is also said the sale in question not only controverted the policy and spirit of the statute, but violated its positive provisions. The conclusion of the court is that under the treaty and law in force at the date of the deed Victoria Smith had no power to sell, and, as the Secretary of the Interior never authorized the sale or consented to it, the sale was void and the deed passed no title. Here the deed was made, as was said before, without the permission of the President and in violation of the treaty and the provisions of the patent, and if no title passed in the case cited, as was held, for the same reason we must hold no title passed in this case. It is true that thirteen years after the deed in question was made and after the death of the grantee it was approved by the President; but we do not regard this as a compliance with the conditions upon which a sale might be made. The sale was consummated, if at all, upon the execution and delivery of a deed. The validity of this act required the consent of the President. It was not obtained, and the act was nugatory and could not be validated by any subsequent attempted approval.

One other question remains to be considered. In addition to the chain of title just considered, plaintiff claimed title to the premises under a tax sale of 1875 for the taxes due on the premises for the year 1874. At the tax sale the property was purchased by Shepard, and upon the expiration of the time allowed for redemption a deed was made to his assignee, Hiram Combs, who conveyed to the plaintiff. On the trial the delinquent list, judgment for taxes, precept, certificate of sale, notice to occupant, affidavit for deed, and
163 deed were put in evidence. Two objections are urged against the sale: First, as the plaintiff claimed to be owner, he was bound to pay the taxes, and could not acquire a tax title and rely upon it as title to the premises. If the plaintiff had been in the actual possession of the land under claim of title the law would require him to pay the taxes; and it being his duty to do so, it may be true that in such case he could not profit by a disregard of a legal duty by allowing the land to go to sale and thus acquire a tax title. But the plaintiff was not in the possession of the land, and he did not have title, as we have shown, and he was under no obligation to pay the taxes on land he did not own, and, being under no obligation to do so, we see no reason why he might not purchase a tax title on the land and rely on such title as well as any other person not interested in the premises. Scover *vs.* Cobb, 98 Ill., 200. The

second objection urged is a variance between the notice of the appellant for judgment and the judgment as respects a description of the premises. In the delinquent list, judgment, and precept the premises were described as follows, which we understand to be the correct description, the tract first described being the one under consideration, no question having been raised as to the second tract:

Name.	Description.	Lot.	Bl'k.	Acr's.	D., cts.	D., cts.	Cts.	D., cts.
North section.....	Robinson's reserve.	Sub-lot	Lot					
Horton	Ex. 12 64 ac. in S. E cor....	1	1	40	16 27	.....	40	16 67
J. Marshall.....	12.64 ac. in S. E. cor.....	1	1	12.64	12	5 61	53	11 26

164 We have not been able to find the publication notice in the record, but in the argument the description of the premises in the notice is conceded to be as follows: "Except 12.64 acres in the southeast corner of sublot 1, lot 1, in north section Robinson's reserve." Whether there may be a variance between the description in the notice and judgment we do not regard as a question of any importance. The real question is whether the premises are sufficiently described in the notice, whether they were described in such a manner that the owner in reading the notice might ascertain from the description that application would be made for judgment against his lands if the taxes were not paid. If the lands are not described in such a manner that they may be known or identified from the description contained in the notice the publication of notice required by the statute might as well be omitted. We regard the description of the land as one of the essential elements of a notice, and unless the notice describes the land in such a manner that it may be identified from that description the court had no jurisdiction to render a judgment against the land. Here the judgment was rendered against sublot 1, lot 1, in Robinson's reserve, except 12.64 A. in southeast corner, while the notice informed the owner that application for judgment would be made against a tract of land described as follows: "Except 12.64 acres in the southeast corner of sublot 1, lot 1, in north section Robinson's reserve." It is manifest that the description contained in the notice describes no lands; it is meaningless and void for uncertainty as it reads, and we are aware of no rule under which a court could properly reject anything contained in the notice or add anything thereto for the purpose of curing its defects. The notice being deficient, the court had no jurisdic-
165 tion to render judgment against the land. The People *vs.* Dragstran, 100 Ill., 286. It therefore follows if the court had no jurisdiction no title passed under the tax sale. The court did not therefore err in excluding the tax proceedings from the evidence.

The judgment will be affirmed.

Aff'd.

Dissenting opinion by SHELDON, *J.*:

The cause was submitted to the court below for trial without a jury.

The plaintiff offered in evidence the following: The Indian treaty; a patent from the United States to Alexander Robinson for land which included the tracts in controversy; a partition between Alexander Robinson and his children, wherein there was set off to Joseph Robinson, one of the children, the lands in controversy, made February 18, 1847.

A warranty deed of August 3, 1858, duly recorded, conveying, for the consideration of $4,100 from Joseph Robinson and his wife to John F. Horton, the lands last named; to which deed is appended the approval of the President of the United States, dated January 31, 1871.

An administrator's deed from the administrator of the estate of Horton to Moses W. Baer, dated October 16, 1863, consideration $318.53, duly recorded, conveying said lands, the deed having been made in pursuance of an order of sale for payment of debts of said estate made by the county court of Cook county.

Then followed several intermediate conveyances of the premises by warranty deeds down to a warranty deed dated November 10, 1866, recorded November 23, 1886, from Henry H. Dyer and wife to Aquila H. Pickering, the plaintiff, conveying for the consideration of $1,600 the same premises.

At the close of the plaintiff's evidence the defendants' counsel, without offering any evidence, moved the court that the plaintiff's testimony be excluded and the case dismissed on the ground that the foundation of plaintiff's title fails, in that the deed from Joseph Robinson to Horton made in 1858 was made in direct
167 violation of the terms of the patent as to obtaining the approval of the President of the United States; which motion the court sustained and plaintiff excepted.

The plaintiff's counsel requested the court to hold the proposition of law that it was not necessary to apply to the President of the United States for leave to convey; that the President had power to approve any deed Joseph Robinson might make subsequent to its execution and delivery, and that such approval would make the deed valid. The court refused to so hold; to which the plaintiff excepted, and after overruling a motion for a new trial the court gave judgment in favor of the defendants.

Joseph Robinson held the absolute fee in the land in question under a patent from the United States, with the simple qualification that he or his children or heirs should not lease or convey the land without the permission of the President of the United States. We have in the case a warranty deed of the land for a valuable consideration made by Robinson, with an approval thereof by the President of the United States indorsed upon the deed.

This, it is thought, effectuates a conveyance of the land from Robinson, and notwithstanding the fact that the approval of the

President was not obtained until after the considerable length of time which here appears after the making of the deed. There appears the permission of the President, and that fulfils the condition for the making of the conveyance. This condition was designed for the benefit of the Indian as a safeguard of his interest against fraud, imposition, and his improvidence in the disposition of his land. A supervisory care in this respect it was thought best should be exercised, and the measure of guardianship which it was seen fit to provide was the President's permission to a conveyance of his land by the Indian. This granting of permission was a duty
168 imposed upon the President and no one else. How and when he should perform it was for him to determine and not for a court to adjudge. No time or form of granting the permission was prescribed. The President assumed to act in the discharge of the duty which was imposed upon him by giving his sanction to the conveyance. Whether it was proper for him to do so at such a length of time after the making of the deed was, it is conceived, for his sole determination.

A similar view was taken in respect of a like provision in the case of *ex dem.* Godfrey *vs.* Beardsley, 2 McLean, 412, where the permission was given before the deed was made. Justice McLean there said: "Neither the treaty nor any law prescribes the form in which this sanction (permission) should be given. The treaty imposed the duty upon the President and he could execute it in such form and manner as his discretion should dictate. * * * Except by permission of the President, Pierre Moran could not convey this land; that permission was obtained before the deed was executed. Now, whether it would have been more judicious to have withheld the sanction until the execution of the deed is a matter about which differences of opinion may exist; but whether given before or after the deed it is equally within the power of the President."

In Jackson *v.* Hill, 5 Wend., 532, where, in order to the validity of a deed made by an Indian, the approbation of the surveyor general was required by the law of New York, it was held that a deed made without such approval, but subsequently approved, was good from the time such approbation was in fact given; and see to same effect Murray *v.* Wooden, 17 Wend., 531.

I think the court erred in its rulings, and that the judgment should be reversed.

169 Be it remembered that afterwards, to wit, on the 6th day of March, A. D. 1889, there was filed in the office of the clerk of said court a certain petition, writ of error, and bond, in conformity with which a certain citation was issued out of the office and under the hand of the clerk of said court; which said petition, writ of error, bond, and citation are in the words and figures following, viz:

170 Original.

STATE OF ILLINOIS, *Northern Grand Division,* } *ss:*

AQUILA H. PICKERING
vs.
JOHN A. LOMAX and WILLIAM KOLZE.

To the chief justice of the supreme court of Illinois:

Your petitioner, Aquila H. Pickering, respectfully represents unto your honor that a final judgment was entered by the supreme court of the State of Illinois on the 22nd day of March, A. D. 1887, in the case therein pending wherein your petitioner was plaintiff in error and John A. Lomax and William Kolze were defendants in error, in and by which judgment your petitioner believes that injustice has been done him; and your petitioner represents that in said cause then pending there was set up and relied upon by your petitioner the fourth article of the treaty between the United States of America and the united nations of the Chippewa, Ottawa, and Pottawatomie Indians of the waters of the Illinois, Milwaukee, and Manitouck rivers, made and concluded at Prairie du Chien, in the Territory of Michigan, now Wisconsin Territory, on the 29th day of July, 1829, which provided that there should be granted by the United States to Alexander Robinson, for himself and children, two sections on the Riviere Aux Pleins above, and adjoining the tract granted to Claude Lafranboise, which provided that said tracts of land should never be leased or conveyed by the grantee of their heirs to any persons without the permission of the President of the United States; that your petitioner claimed title to the land in controversy in said suit, through
171 said treaty and said Robinson, by virtue of the deed mentioned in the record in the case which was executed by the said Robinson and afterwards approved by the President of the United States, and that the principal question in said case was whether by the construction of said treaty the said Robinson or his heirs could convey any title without the approval of the President of the United States being first had, and that the said supreme court of the State of Illinois held in said cause that the approval and permission of the President of the United States obtained upon the deed of said Robinson subsequent to the execution thereof was nugatory, and that under the provision of said treaty, as construed by said supreme court, your petitioner got no title, although the subsequent approval of the President of the United States was obtained, and so your petitioner represents that he had in said cause title and right claimed under a treaty of the United States, and that the decision of said supreme court was against said title and right which in said cause was claimed and set up by your petitioner, and that under section 709 of the Revised Statutes of the United States decisions of such nature may be reviewed by writ of error by the Supreme Court of the United States.

Wherefore your petitioner prays that a writ of error may be al-

lowed to have said records and proceedings reviewed by the Supreme Court of the United States, at Washington, in accordance with the statute in such case made and provided.

Respectfully submitted.

AQUILA H. PICKERING,
By BISBEE, AHRENS & DECKER, *His Att'ys.*

172 The prayer of the above petition is hereby allowed.
Ottawa, Ills., March 4th, 1889.

A. M. CRAIG,
Chief Justice of the Supreme Court of the State of Illinois.

173 UNITED STATES OF AMERICA, } ss:
Northern District of Illinois, }

The United States of America to the judges of the supreme court of the State of Illinois, Greeting:

Because in the record and proceedings, as also in the rendition of a judgment in a plea which is before you in said supreme court, between Aquila H. Pickering, plaintiff in error, and John A. Lomax and William Kolze, defendants in error, in an action of ejectment, a manifest error hath happened, to the great damage of the said Aquila H. Pickering, plaintiff in error, as by his complaint appears, and it being fit that the error, if any there has been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be given therein, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October, A. D. 1889, in the Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the law and custom of the United States should be done.

Witness the Hon. Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this fourth day of March, in the year of our Lord one thousand eight hundred and eighty-nine, and of the Independence of the United States the 113th year.

Seal of Circuit Court U. S., Northern Dist. Illinois, 1855.

WM. H. BRADLEY,
Clerk of the Circuit Court of the United States for the Northern District of Illinois.

174 [Endorsed:] Original. Supreme Court of the United States. Aquila H. Pickering, plaintiff in error, *vs.* John A. Lomax and William Kolze, defendants in error. Writ of error. Copy deposited for the defendant in error in the clerk's office of the supreme court of the State of Illinois.

175 Know all men by these presents that we, Aquila Pickering, as principal, and Lewis H. Bisbee, John P. Ahrens, and Henry Decker, as sureties, of the county of Cook, State of Illinois, are held and firmly bound unto John A. Lomax and William Kolze, also of said county and State, in the penal sum of one thousand dollars, lawful money of the United States; for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly, severally, and firmly by these presents.

Witness our hands and seals this 5th day of March, A. D. 1889.

The condition of the above obligation is such that whereas the said John A. Lomax and William Kolze did, on the 21st day of July, A. D. 1885, at the July term, 1885, of the superior court of Cook county, Illinois, recover a judgment against the said Aquila H. Pickering for costs in a certain action of ejectment then pending in said court, wherein said Aquila H. Pickering was plaintiff and the said John A. Lomax and William Kolze were defendants, from which said judgment of the superior court of Cook county the said Aquila H. Pickering prayed for and obtained an appeal to the supreme court of the State of Illinois; and whereas the said supreme court of the State of Illinois did afterwards, on the 22nd day of March, 1887, affirm said judgment of the said superior court of Cook county and did render judgment against the above-bounden Aquila H. Pickering for costs of suit; and whereas said
176 Aquila H. Pickering has obtained a writ of error from the Supreme Court of the United States of America to said supreme court of Illinois to revise the judgment in the aforesaid suit, and citation directed to said John A. Lomox and William Kolze, citing and admonishing them to be and appear at a Supreme Court of the United States to be holden at Washington on the second Monday of October next:

Now, the condition of the above obligation is such that if the said Aquila H. Pickering shall prosecute his said writ of error to effect and pay the amount of the judgment, costs, and damages rendered or to be rendered against him if he failed to make his plea good, then the above obligation to be void; otherwise to remain in full force and effect.

AQUILA H. PICKERING. [SEAL.]
HENRY DECKER. [SEAL.]
LEWIS H. BISBEE. [SEAL.]
JOHN P. AHRENS. [SEAL.]

Approved by—
A. M. CRAIG,
Chief Justice of the Supreme Court of Illinois.

177 Original.

UNITED STATES OF AMERICA, } ss:
Northern District of Illinois, }

To John A. Lomax and William Kolze, Greeting:

You are hereby cited and admonished to be and appear at a Su-

preme Court of the United States, to be holden at Washington on the second Monday of October, A. D. 1889, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Illinois, wherein Aquila H. Pickering is plaintiff in error and you are defendants in error, to show cause, if any there be, why the final judgment rendered against said plaintiff in error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Seal of the Supreme Court, State of Illinois, Aug. 23, 1818.

Witness the Hon. A. M. Craig, chief justice of the supreme court of Illinois, this 6th day of March, in the year of our Lord one thousand eight hundred and eighty-nine.

A. H. TAYLOR,
Clerk of Supreme Court of Ills., Northern Grand Division.

178 [Endorsed:] Supreme Court of the United States. Aquila H. Pickering *vs.* John A. Lomax, William Kolze. Citation to October term, A. D. 18—. Filed Mar. 8, 1889. A. H. Taylor, clerk.

Service of the foregoing citation is admitted.
Chicago, March 7, 1889.

P. T. McELHERNE,
Att'y for Defendant- in Error in the Supreme Court of the State of Illinois.

179 STATE OF ILLINOIS:

Supreme Court, Northern Grand Division.

I, Alfred H. Taylor, clerk of the supreme court in and for the northern grand division of the State of Illinois and keeper of the records and seal thereof, for return to the foregoing writ of error do hereby certify the foregoing to be a true copy of the record and proceedings as above set forth in the case specified in said writ of error, wherein Aquila H. Pickering is plaintiff in error and John A. Lomax and William Kolze — defendants in error, together with said writ of error and the citation issued thereon, with the admission of service by said defendants in error endorsed thereon, and the order allowing the same; also the certificate of Hon. Alfred M. Craig, chief justice of the supreme court of Illinois, and a copy of the bond given by said plaintiff in error in that behalf, the original of said bond remaining on file in the office of the clerk of said court.

Seal of the Supreme Court, State of Illinois, Aug. 23, 1818.

Witness Alfred H. Taylor, clerk of said supreme court of Illinois, and the seal thereof, at Ottawa, this eighth day of March, A. D. 1889.

A. H. TAYLOR,
Clerk Supreme Court.

180 In the Supreme Court of the United States of North America.

AQUILLA H. PICKERING, Plaintiff in Error,
vs.
JOHN A. LOMAX and WILLIAM KOLZE, Defendants in Error.

And now comes the said plaintiff in error, by his attorneys, Lewis H. Bisbee, John P. Ahrens, and Henry Decker, and says that there is manifest error in the record of the foregoing proceedings in the said supreme court of the State of Illinois for the northern grand division of said State, for that the said court erred in holding that under article four (4) of the treaty between the United States of America and the united nations of the Chippewa, Ottawa, & Pottawatomie Indians of the waters of the Illinois, Milwaukee, and Manitouck rivers, made and concluded at Prairie du Chien, in the Territory of Michigan, on the 29th day of July, 1829, a conveyance could not be made by Joseph Robinson, one of the children of Alexander Robinson, named in said treaty, so as to convey any title, even though the President of the United States approved of such conveyance after the same was executed and delivered.

2nd. The said court erred in holding that the deed from
181 Joseph Robinson to Horton, mentioned in the record, was void.

3rd. The said court erred in holding that Joseph Robinson had no authority to convey without obtaining the permission of the President before such conveyance was made.

4th. The said court erred in holding that the subsequent sanction of the President, obtained by persons claiming title under Robinson, of the deed of Robinson was invalid.

5th. The judgment of said supreme court and order affirming the judgment of the superior court of Cook county, in said State, was contrary to the law and evidence in the case.

6th. The said court erred in holding that the plaintiff in error obtained no right, title, or interest in the lands in controversy in this suit through the conveyance of Joseph Robinson under the 4th article of said treaty.

7th. The said court erred in not reversing the judgment of the superior court of Cook county.

Wherefore appellant prays that said errors may be considered by this court, and that judgment and order of said cause in the supreme court of the State of Illinois may be reversed and said cause remanded.

L. H. BISBEE.
JOHN P. AHRENS.
HENRY DECKER.

Endorsed on cover: Case No. 13,516. Illinois supreme court. No. 342. Aquila H. Pickering, plaintiff in error, *vs.* John A. Lomax & William Kolze. Filed March 20, 1889.